Canadian Transport Commission
Commission canadienne des transports

Traffic and Tariffs Branch
Direction de l'exploitation et des tarifs

PRELIMINARY REPORT: INQUIRY INTO EFFECTS OF U.S. RAIL DEREGULATION

Pursuant to a Request by the Minister of Transport
Under Section 48, National Transportation Act

Canada

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Pursuant to a Request by the Minister of Transport

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Submitted to the
Railway Transport Committee
by
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Traffic and Tariffs Branch

Version française disponible sous
le titre
"Rapport préliminaire:
Étude sur l'incidence de la déréglementation
ferroviaire aux États-Unis".

First Printing, April 1984

Canadian Transport Commission
15 Eddy St., 15th floor, Ottawa-Hull K1A 0N9

©Minister of Supply and Services Canada 1984
Catalogue Number TT32-5/1984E
ISBN 0-662-13240-8

Printed in Canada

EXECUTIVE SUMMARY

BACKGROUND

The *Staggers Rail Act of 1980* (*Staggers*) was intended to improve the financial position of railways in the U.S., and to make them more competitive with other modes of transportation and with each other. The new U.S. law could affect the Canadian economy directly by influencing the trade position of Canadian shippers or indirectly by affecting the viability of the Canadian railway system. Carriers transporting goods between Canada and the U.S. could face legal difficulties if *Staggers* and Canadian law each require actions forbidden by the other. The over-riding issue taken up in this inquiry, therefore, is whether a need has been demonstrated in interviews and written submissions for changes in Canadian law as a consequence of economic harm or legal contradictions resulting from enactment of *Staggers*.

The significance of possible effects of *Staggers* is indicated by certain economic facts. Canadian goods valued at over $48 billion were exported to the U.S. in the year *Staggers* was passed, over $13 billion (about 28 per cent) by rail. Nearly $700 million in Canadian rail revenues derived from this export trade, while about 27 per cent of total Canadian rail revenues depended on traffic moving to and from the U.S. in that year.

Proportion of value of exports to the U.S. transported by rail ranged from about 48 per cent in B.C. to less than 17 per cent from the Prairie provinces in 1980. Canadian railway labour income equalled about one per cent of overall Canadian gross domestic product in 1980, but over three per cent of Manitoba and New Brunswick gross domestic product. Staggers could therefore have particular regional impacts as well as affect Canada as a whole.

EVIDENCE OF ECONOMIC HARM

Traffic Diversion (Short-hauling)

Canadian railways claimed revenue reductions totalling in the tens of millions of dollars as a result of U.S. railway diversions or attempted diversions of traffic following enactment of *Staggers*. That is, as a result of rebate contracts, surcharges, route cancellations, and other methods permitted by *Staggers*, shippers were induced to specify routings which gave long hauls on American track and short hauls on Canadian track, or demanded rate reductions from Canadian railways to maintain traditional routings. Officials of the Quebec government noted that diversion of overhead (U.S.-U.S. via Canada) traffic could make important sections of Quebec's rail system uneconomic, with consequent effects on both domestic and export shippers.

However, Quebec officials joined with other provincial government officials and several shippers and shipper associations in noting that some tactics introduced by *Staggers* — notably contract rebating — had benefited shippers, reducing transportation costs and permitting more (and more profitable) sales in U.S. markets.

Neither shippers nor carriers have been publicly forthcoming with evidence to substantiate their claims of economic harm or advantage. Nonetheless, railways and some large shippers have suggested that Canadian law be changed to allow railways to enter into confidential rate contracts with shippers to equalise railways' competitive positions. Some railway officials have also suggested that shipper protective provisions of Canadian law which have no U.S. counterparts (i.e. S. 23 of the *National Transportation Act*) not be applied on cross-border traffic, for instance in situations where Canadian railways might cancel or surcharge particular routes to retain a longer proportion of through hauls and hence greater divisions of revenues. This proposal has been vigorously protested as dangerous to shippers in domestic as well as cross-border markets.

Confidentiality of Rates

Profitability on traffic destined to markets contested by American and Canadian shippers would be greatest, *ceteris paribus*, for shippers able to most accurately estimate rivals' costs; similarly profitability on hauling that traffic would be greatest to the carrier best able to estimate concessions which would attract shippers to his long-haul. While Canadian rates are required to be published, American ones may be kept confidential by contract or may be freed from all regulation (including publication requirements) in certain cases. In interviews and written submissions it was suggested that Canadian companies are disadvantaged, therefore, by the requirement to publish all rates.

On the other hand, some shippers and government officials noted that retention of publication was important to S. 23 protection. As well, costs of ascertaining current rates and negotiating with numbers of carriers had increased post-*Staggers*. These parties believed that Canadian rates should continue to be published and assistance in determining rates should be publicly provided.

EVIDENCE OF LEGAL CONTRADICTIONS

Compliance Difficulty with Canadian Law

Railway officials stated that as a result of a C.T.C. decision they were required to maintain certain rate relationships on particular traffic but as a result of confidential contracts did not know all the U.S. rates to which Canadian ones should be related. Shippers pointed out, however, that rates continued to be published on which relationships could be based.

Legality of Contract Rates

Concern was expressed by various parties that contracts allowed by *Staggers* but applying on Canadian traffic moving to or from the U.S. could contain clauses, especially rebate clauses, effectively altering published through rates. The clauses might not be published in tariffs whereas

Canadian law requires rates to be published. Shippers, however, suggested a variety of clause types which might not violate Canadian law.

Discovery Problems

Any rate specified in a contract is legal in the U.S. whereas non-compensatory rates are not legal in Canada. Obtaining details of contracts to determine whether Canadian law has been violated was expressed to be a possible problem. However, no cases have been brought forward in Canada to test the point.

Consistency of Interpretation

Various parties noted that legality of traffic diversion practices, residual rate regulation and requirements for publication or discovery of confidential contract clauses are currently being litigated in the U.S. These parties also warned against too rapid change in Canadian low which might require subsequent modification.

PRELIMINARY CONCLUSIONS OF THE INQUIRY OFFICERS

The Staggers Rail Act of 1980 provided U.S. railways with freedom from certain kinds of regulatory burden and allowed them something similar to the very great rate-setting flexibility enjoyed by Canadian railways since enactment of the National Transportation Act of 1967.

Staggers effects on and implications for Canada have been suggested but not demonstrated by any party. Possible legal effects and implications have not been tested in Canada and are still in question before U.S. courts.

The Inquiry Officers are not persuaded on the basis of evidence currently available that changes in Canadian law are necessary or desirable. New and substantial evidence would have to be brought to public view for Inquiry officers to recommend such changes.

A NOTE ON AUTHORSHIP

This report is preliminary, and therefore subject to revision prior to finalization. So that suggestions for revision can be expeditiously addressed, it may be useful to note that Mr. R.E. Graham was primarily responsible for Sections 3.3, 4.7, 4.8, 4.11, 4.12, 4.13, 4.15, 4.17, 4.19, 4.20, 5.5, and 5.6. Mr. J.T. Russell was principal author of all other sections of the report, except for maps appearing at the end of the report which were prepared by Mr. G. Browning of the Traffic and Tariffs Branch and Mr. S. Ward of the C.T.C.'s Publications Division.

The authors are grateful for research support from Mr. Browning and Ms. K. Pettigrew. We are also thankful for the comments and advice of K. Margaret Bloodworth, Commission Counsel, at various stages of this inquiry and the report's drafting. The authors, are, however, responsible for any mistakes which remain in the report.

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1.0 INTRODUCTION

The Staggers Rail Act of 1980 (Staggers) was enacted October 14, 1980, and now is incorporated in Title 49, USC (the revised Interstate Commerce Act). Passage of Staggers marked an abrupt change in the U.S. from reliance on close regulation to reliance on competition as a policy tool. In some ways, this change to reliance on competition was similar to that which took place in Canada with passage of the National Transportation Act (NTA) in 1967. There are differences between the U.S. and Canadian legislation, however, both in specific provision and in general policy thrust. These differences can directly or indirectly affect transborder operations on which Canadian railways rely for a substantial part of their revenue. They may also affect access to markets and competition experienced by Canadian exporters and importers.

In part because of Staggers' potential to affect the Canadian economy, the then Minister of Transport, the Hon. Jean-Luc Pepin, requested in a letter to the Canadian Transport Commission

> "...that the Commission, pursuant to Section 48 of the National Transportation Act, inquire into and report to me ... on the known effects and the implications for Canadian railways and shippers of the deregulation of the U.S. rail industry resulting from the enactment of the Staggers Rail Act of 1980..."

Section 48 of the NTA states:

> " 48. The Commission may, of its own motion, or shall, upon the request of the Minister, inquire into, hear and determine any matter or thing that, under this Part or the Railway Act, it may inquire into, hear and determine upon application or complaint, and with respect thereto has the same powers as, upon any application or complaint, are vested in it by this Act".

The terms of reference for the inquiry were agreed on in correspondence dated July 20, 1983, between the Minister and the CTC's Acting President, Mr. John T. Gray, Q.C., and are included as Appendix 1 to this preliminary report. Messrs. J.T. Russell and R.E. Graham were appointed under Section 81 of the National Transportation Act effective August 12, 1983, to inquire into and report to the Railway Transport Committee of the CTC in accordance with the terms of reference.

Section 81 of the N.T.A. states:

> 81. (1) The Commission may appoint or direct any person to make an inquiry and report upon any application,

> complaint or dispute pending before the Commission, or upon any matter or thing over which the Commission has jurisdiction under this Act, the Railway Act or the Special Act.

It was decided to proceed with the inquiry in a number of stages. In the first stage, inquiry officers met with railway officers, officials of provincial governments, shipper associations and their members on an informal basis. At the same time that these free-ranging discussions were held, participants were encouraged to make written submissions concerning their perceptions of the effects of Staggers and other matters related to the Terms of Reference.

This preliminary report is based largely on the informal discussions referred to above, as well as on such written submissions as were received in time for consideration in the report's preparation. It does not purport to be comprehensive, nor to represent fully the positions of shippers and carriers with whom inquiry officers met. Indeed, many of those who supplied information and suggestions included in this report were most anxious that it be clear they had reached no final position on these matters, nor had their companies or organizations. The situation is very much in flux, and some may have substantially altered their tentative conclusions on many matters since meeting with inquiry officers.

Nonetheless, this report does reveal a wide range of opinion on the effects of Staggers and on what is significant or necessary in terms of responsive action by government or other organizations in Canada. It is released to initiate a second phase of the inquiry: gathering of more widespread and comprehensive written submissions on the issues raised herein, and others which readers may bring out in response to perspectives presented.

This preliminary report first notes what are thought to be significant areas of difference between current Canadian railway legislation and U.S. railway legislation resulting from Staggers. It then outlines opinions expressed by different persons and organizations contacted in the first stages of the inquiry. Issues arising from these various perspectives are briefly discussed in a further section and finally some tentative conclusions are noted.

It is hoped that response to this report will be made quickly so that, should it be apparent that a public hearing ought to be held to examine these issues further, that may be done before a final report is prepared for submission to the Minister.

2.0 LEGISLATIVE PROVISIONS

2.1 General

Prior to passage of Staggers, the U.S. Congress had found that railways had lost monopoly power due to competition from other modes of transportation and that railway earnings were inadequate to generate or attract needed capital. Barring increased railway earnings, further deterioration of the rail system or increased federal subsidies would result. The Canadian Government had found similar conditions in Canada prior to enactment of the National Transportation Act (NTA) in 1967. In 1980, the U.S. Congress found that "modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential..." (Pub. L. 96-448-2(9)), a determination which again was consistent with the Canadian experience prior to the NTA.

In passing the Staggers Rail Act of 1980, now incorporated in Title 49 of the Official Code of the Laws of the United States (49 USC), the U.S. Congress took similar action to that taken by the Canadian government in passing the NTA:

a) establishment of a new policy toward rail regulation, and

b) provisions for carrying out that policy.

While the reasons for legislation and the general policies were similar, however, there were significant variations between Canada and the U.S. both in the policies and in specific provisions for carrying out those policies. Some of these are examined below.

2.2 Policy: Intermodal and Intramodal Competition

The National Transportation Policy of Canada, contained in Sec. 3 of the NTA, rests on intermodal competition, railways being one competing mode. Section 10101a of 49 USC, enunciates a specifically rail transportation policy for the United States. While intermodal competition is part of this policy (10101(a) (5)), competition within the rail mode itself is also a priority (10101(a) (4)). Additionally, adequacy of rail carrier revenue is a specific concern of U.S. policy (10101(a) (3)) as is the elimination of non-compensatory rates (10101(a) (10)). Canadian policy is concerned not with the adequacy of rail carrier revenues but with the interests of the users of transportation which are declared to be best served by an "economic, efficient and adequate transportation system". Canadian law does require, though not as a policy goal, that rail rates be compensatory (S.276 RA).

2.3 Publication of Rates

Section 269(4) of the Railway Act states that only tolls specified in tariffs filed with the CTC may be charged for rail transport in Canada, whereas Section 275(1) RA requires that all freight tariffs be filed and published. Agreed charges, defined in Section 32 of the Transport Act (TA), are also required to be filed and published. Thus, in Canada, rates charged for freight traffic are public knowledge, as are the conditions under which the specified rates apply.

Since Staggers, this is not necessarily true of rates or the conditions under which they are charged in the U.S. Section 10762 of 49 USC provides for filing and publication of common-carrier tariffs, including rates. However, Section 10713, effected by Staggers, permits rail carriers to "enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions". Contracts must be filed with the Interstate Commerce Commission (ICC), but are not published. There is provision for dissemination of "nonconfidential summaries" of individual contract provisions and there is a further requirement that the ICC publish special tariff rules "to assure that the essential terms of the contract are available to the general public in tariff format." These special tariff rules were published November 4, 1982 as "Ex Parte 387: Railroad Transportation Contracts", and now form Section 1039 of Title 49 of the Code of Federal Regulations (49 CFR).

Relatively little information is included in the "essential terms of the contract" made publicly available through 49 CFR. For instance, neither the origin and destination points of traffic (except in the case of agricultural products) nor the rates applied on it are required to be made public.

Additionally, under certain circumstances outlined in Section 2.9 below, the ICC is empowered to release specified rail traffic from all economic regulation, including rate filing.

2.4 Rebates

Section 10741 of 49 USC forbids carriers to discriminate between purchasers of rail services through charging special rates or providing for rebates for one purchaser and not another in substantially similar circumstances. However, subsection (f) of S. 10741 specifically exempts arrangements made as part of a railway contract from the effect of this section. That is, rebates made as part of a contractual agreement are permitted under post-Staggers American law. Neither the amounts of rebates nor the conditions under which they are paid are required to be published.

In contrast, discriminating between purchasers of rail service by rebates is forbidden by Canadian law, except insofar as rebates are published, through S. 380 RA. Leave of the Commission must be obtained, however, before prosecution for the legal penalties against secret rebating may be had (380(3) RA).

2.5 Liability

While 49 USC 11707 states that common carriers in the U.S. are generally liable for damages, it also provides for limitation of liability for property transported under section 10730 of 49 USC. That section reads, in part, "A rail carrier...may establish rates...under which the liability of the carrier...is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier..." (49 USC 10730(2)(c)).

In Canada, rail carriers are liable for damages to traffic carried unless otherwise authorized or approved by order or regulation of the CTC (S. 294 RA). In practice, the CTC has generally issued orders authorizing limitation of liability on terms mutually agreed to by affected parties (i.e. when shipper, consignee and carrier are willing to contract agreement).

The practical differences between U.S. and Canadian law are, then, those of regulatory approval and of publicity. In Canada, limitations on liability and the conditions governing such limitations are a matter of public record as they are published in CTC orders; in the U.S., limitations of liability and conditions governing these need neither be approved by the ICC nor published, as they are provisions of contracts made under 49 USC 10713. U.S. regulations require publication only of the fact that liability is addressed in the contract, not the details of the agreement.

2.6 Consultation Between Carriers

Section 279 of the Railway Act specifically allows railway companies subject to that Canadian law to agree upon and charge common rates and exchange certain cost information between carriers. Section 10706 of 49 USC, a result of Staggers, allows for prosecution of railways subject to American law who engage in similar action, except in certain narrowly defined circumstances. Even agreements which are allowed are required to be reviewed at least every three years (10706(h)) and periodic assessment and review by the Antitrust Division is also required (10706(i)).

What is permitted without being subject to prosecution under U.S. Antitrust law (particularly the Sherman Act) includes:

1. Carriers may enter agreements for compilation and publication or distribution of rates in effect or to become effective (10706(a)(4));

2. Carriers may discuss or vote on rates for interline movements if they can "practically participate" in those movements (10706(a) (3)(A)(ii)). This has been clarified to mean that interlining carriers may discuss rates only on the movements where they could interline traffic and only with the carriers offering, receiving, or handling on an intermediate basis, traffic on that route.

3. Shippers may agree to discuss among themselves compensation to be paid by carriers for use of shipper equipment provided that the ICC approves such agreement. The ICC can approve such agreements only if they further the transportation policy of 10101(a).

2.7 Extra-territoriality

Neither U.S. nor Canadian railway law claims extraterritorial jurisdiction. However, activities contrary to U.S. antitrust legislation have been successfully prosecuted in U.S. courts even where those activities took place outside U.S. territory, were legal in the countries where they took place, and even were required by law in the countries where they took place. Cases cited in this connection include:

U.S. versus Aluminum Company of America et al. (148F (2nd) 416 (second Circ. 1945),
Continental Ore Co. et al. versus Union Carbide and Carbon Corp. et al. (370 U.S. 690 (1962),
U.S. versus The Watchmakers of Switzerland Information Center Inc. (1963 trade cas 77,414 (s.d.n.y. 1962) order modified 1965 trade cas 80,490 (s.d.n.y. 1975),
In Re Uranium Anti-Trust Litigation-Westinghouse (480F, supp. 1138 (1979 n.d. Ill).

Canadian National and Canadian Pacific Railways have petitioned the ICC to be treated as one company under the antitrust laws insofar as their Canadian operations are concerned. This would permit the companies, for example, to agree on rates to U.S. border points from competitive points in Canada, as is legal here, without being prosecuted for what would be illegal under U.S. law. It is not clear, however, whether the ICC has the power to grant the railways' petition, nor that it will do so if it has the power.

According to a spokesman for the U.S. Justice Department, the ICC would normally be able to grant immunity from antitrust legislation only if it could, itself, oversee the organizations granted immunity. As the ICC has no jursidiction in Canada, it may not be able to grant immunity to Canadian railways.

Whether U.S. authorities would prosecute Canadian railways--or Canadian shippers--for acting in concert to establish rail rates would seem to depend in large part on whether the interests of American consumers would be directly harmed by such action. It would appear unlikely, for example, that collective bargaining by Canadian shippers to achieve reduced rates on traffic to the U.S. would result in harm to U.S. consumers or prosecution of the Canadian shippers. The case is not so clear for Canadian railways acting in concert to establish rates to U.S. destinations.

U.S. law provides that two sets of penalties may apply to violators of the antitrust laws: Criminal penalties for breach of the law itself and civil penalties for which injured parties may sue. The latter amount to triple the amount of any real damages suffered.

2.8 Joint Rates

The ICC is empowered by 10705 49 USC to prescribe through routes, joint rates, and the conditions of operation of through routes (including division of joint rates) for carriers subject to the ICC's jurisdiction under

S. 10501 and S. 10502 of 49 USC. Under 10501 (a) the ICC has jurisdiction over transborder rail transportation to the extent the transportation is in the United States. However, 10505 49 USC provides that rail carrier transactions and services may be exempted from regulation in certain circumstances. (See Section 2.9).

Canadian law empowers the CTC to order, where necessary, operation of joint routes, the rates to be applied on traffic so routed, and divisions of rates between carriers "where traffic is to pass over any continuous route in Canada..." (S. 285 RA). For transborder traffic, S's 286 and 287 RA require filing of tariffs with the CTC, while S. 289 RA states that joint tariffs are subject to provisions of the Act requiring publication and that rates charged must be those specified in the published tariffs.

2.8.1 Cancellation of Joint Rates

Cancellation of joint rates may effectively eliminate the use of the joint routing for traffic to which the rates apply. Cancellation of joint rates is addressed in Sections 20705 and 10705(a) of 49 USC. The latter, through 10705(a)(c), provides carriers with the right to cancel joint rates in cases where less than 110 per cent of their variable costs are provided by the rate. Cancelling tariffs must be filed with the ICC 45 days prior to their effect, according to 10705(a)(f).

By contrast, a carrier wishing to cancel joint rates under authority of 10705(e) rather than 10705(a) must prove that cancellation is consistent with the public interest. In considering whether the burden of proof has been met, the ICC must, where applicable:

1) compare the distance travelled and the average transportation time and expense required using (A) the through route, and (B) alternative routes, between the places served by the through route;

2) consider any reduction in energy consumption that may result from cancellation; and

3) consider the overall impact of cancellation on the shippers and carriers that are affected by it.

The consideration required has to some extent been clarified by a U.S. Court of Appeal Decision Chesapeake and Ohio Railway Co. et al. v. United States of America 7th Cir. Nos. 81-2286, 82-1693 and 82-1625 (April 4, 1983). However, shippers and carriers have complained that adequate redress is not available and this question is currently under further study by the ICC and Congress.

In Canada, appeal against cancellation of joint rates could be made under Section 23 N.T.A. That section empowers the CTC to investigate whether any act or omission of a carrier may prejudicially affect the public interest, provided that the Commission is satisfied that a *prima facie* case has been made. The public interest is broadly defined in the legislation, and S. 23(4) gives the Commission broad powers to correct any prejudice against the public interest which may be discovered.

2.8.2 Surcharging of Joint Rates

Section 10705a, which permits cancellation of joint rates in some circumstances, also permits carriers to surcharge joint rates in certain circumstances. This authority to apply surcharges without agreement by all carriers participating in the joint rate had been scheduled generally to expire on September 30, 1983, but was extended for one additional year, according to provisions of 10705a(p). In any case, surcharges imposed prior to expiry of the authority would remain in effect afterwards.

In essence, 10705a states that carriers not earning adequate revenues (a term defined in Ex Parte 393) are permitted to apply surcharges such that their revenues from the movement over a joint route will equal at least 110 per cent of their variable costs for the movement (10705a(a)). These carriers may apply surcharges on joint route traffic moving on light density lines such that revenues equal at least 110 per cent of variable costs and 100 per cent of "reasonably expected costs of continuing to operate such line" (10705a(b)). By light density line is here meant one which carried less than 3,000,000 gross ton miles of traffic per mile in the most recent year for which traffic data is available.

The ability to surcharge to provide similar revenues on light density lines is restricted to lines with one third the traffic density (1,000,000 gtm/m) for carriers earning adequate revenues. The adequate-revenue carriers may surcharge to increase revenues to at least 110 per cent of variable costs (not necessarily also 100 per cent of other costs) in the case of lines with traffic densities less than 3,000,000 gtm/m.

All surcharges must be published, and the burden of proof that restrictions allowing the surcharge are met is on the challenger of a surcharge, not on the surcharging carrier.

In Canada, surcharges must be published and filed with the CTC as are other tariffs and are similarly subject to challenge through Sec. 23, N.T.A.

2.9 Exemption From Regulation

Section 10505 of 49 USC has perhaps the greatest potential for creating differences between U.S. and Canadian regulatory pratices. This section makes exemption from regulation mandatory ("The Commission shall...") for "a person, class of persons or a transaction or service" when "...the application of a provision of this subtitle:

1) is not necessary to carry out the transportation policy of section 10101a of this title; and

2) either (A) the transaction is of limited scope or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power."

The ICC may specify the period of time during which an exemption is effective (10505(c)) and may revoke exemptions granted to the extent continued application of regulation is necessary to carry out policies contained in 10101a (10505(d)).

Most recently, the ICC has deregulated all traffic moving in boxcars (Ex Parte No. 346), a decision which is currently being appealed by several parties. The decision was to take effect November 7, 1983, but was changed to be effective January 1, 1984 for railways other than Class III railways and July 1, 1984 for Class III railways. In Ex Parte 346, the ICC noted:

> "The Commission has granted general exemptions from regulation for rail transportation of fresh fruits and vegetables (1979), certain other food items (1980), vegetable seeds (1981), citrus pomace (1981), hops (1982), liquid iron chloride (1983), and other agricultural commodities except grain and sunflower seeds (1983). Now pending is a proposed exemption for frozen foods. In addition, the Commission has exempted all transportation provided in rail "piggyback" equipment (trailers and containers on flat cars, or TOFC/COFC) (1981). We are also considering an exemption for export coal."

An important innovation in the boxcar deregulation decision was a provision to allow railways to vary normal equipment service practices; i.e., to charge for return of empty equipment and for storage of unloaded equipment.

Canadian law has no broad exemption clause similar to that in the U.S.

2.10 Mergers

Section 11343 of 49 USC requires ICC authorization for consolidation, merger or acquisition of control of transportation companies under ICC jurisdiction, excluding pipeline companies but including rail carriers. Section 11345 sets out maximum times which may be taken by the ICC in dealing with stages of proceedings involving rail carriers, whereas S. 11346 describes an expedited procedure which existed prior to January 1, 1982 for proceedings involving rail carriers. The general procedure now in force and conditions to which ICC approval is subject are, however, set out in S. 11344.

According to S. 11344(a), when a rail carrier is involved in a proceeding, a public hearing must be held unless the ICC determines that it is not necessary in the public interest. The ICC is required by 11344(d) to approve applications which do not involve the merger or control of at least two Class I railways unless:

"1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs."

By 11344(c), the ICC is required to approve a transaction which is "consistent with the public interest". However, where a proceeding involves the merger or control of at least two Class I railways, 11344(b) requires the ICC to consider:

"1) the effect of the proposed transaction on the adequacy of transportation to the public.

2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

3) the total fixed charges that result from the proposed transaction.

4) the interest of carrier employees affected by the proposed transaction.

5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region."

In general then, the U.S. legislation encourages mergers whenever substantial anti-competitive effects are not demonstrated to be likely outcomes.

In Canada, S. 91 RA deals with amalgamation of railway companies and agreements to sell, convey or lease all or part of a railway, while S. 27 NTA governs proceedings in which transportation companies to which the legislative jurisdiction of the Parliament of Canada extends, including railway companies, propose to acquire interests in other transportation businesses. In terms of Commission authority, S. 91 RA provides only that the Commission may grant or refuse the application for a recommendation to the Governor in Council for sanction of the agreement. S. 27(4) NTA provides that, where objection is made by a person, carrier association or transportation undertaking affected by the acquisition, the Commission "may disallow any such acquisition if in the opinion of the Commission such acquisition will unduly restrict competition or otherwise be prejudicial to the public interest; and any such acquisition to which objection is made within the time limited therefor by the Commission that is disallowed by the Commission, is void."

In some ways, the ICC's powers in respect of mergers and acquisitions are broader than the CTC's. For example, the CTC must have an objection before it has any right to intervene under S. 27. On the other hand, the CTC's powers are expressed in terms of a discretion to disallow whereas the ICC must consider and approve provided certain conditions are met. In each case, however, the discretion is linked to the public interest. The corollary of the CTC's power would seem to be, however, that it *may not* disallow unless the expressed condition is found.

2.11 Maximum Rates and Captive Shipper Protection

Section 10701a(a) of *49 USC* states that, unless prohibited by subsections (b) or (c) of 10701a, rail carriers "may establish *any* rate for transportation or other service provided by the carrier" (emphasis added). 10701a(c) is a minimum rate clause, essentially confirming the policy that rail rates be compensatory. 10701a(b) provides a mechanism whereby a maximum rate may be determined in certain very limited circumstances. The key provision in 10701a(b) is:

> "1) If the Commission determines, under section 10709 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable."

Sub-paragraph (2) gives guidelines related to 10707a on circumstances in which the burden of proof as to the reasonableness of rates rests with the carrier or with the challenging shipper. Sub-paragraph (3) orders the Commission, in determining reasonableness of rates, to recognize the policy established by 10704, "that rail carriers shall earn adequate revenues".

A rate may, then, be deemed "unreasonable" in certain circumstances *provided* the carrier is determined to have "market dominance" over traffic to which the rate applies. Both "market dominance" as determined under 10709 and "reasonableness" depend in part on whether the ratio of revenue to variable costs resulting from application of the rate exceeds a certain figure (roughly 190 per cent) (10707a). The policy of "adequate revenues" which the ICC must recognize in determining "reasonable rates" is generally fulfilled when the carrier earns its current cost of capital through rail operations (10704 and Ex Parte No. 393).

There is considerable controversy over methods of calculating the relevent ratios and capital costs, the nature of the "recognition" the ICC should give to the policy of adequacy of carrier revenues and the criteria used in determining "market dominance" for traffic. A large number of proceedings, decisions, appeals and rule makings have resulted from this controversy, including Ex Parte 347(1) *Coal Rates Guidelines, Nationwide*.

In Canada, a shipper of goods "for which in respect of those goods there is no alternative, effective and competitive service by a common carrier other than a rail carrier..." may apply to the CTC under S. 278 *RA* to determine a maximum rate applicable on his traffic. The rate fixed would be based on a 150 per cent markup above variable costs, where variable costs are determined on a shipment weight of only 30,000 pounds. A complicated formula could result in some rate reductions for shipment weights over 50,000 pounds.

However, shippers, whether or not "captive" in the sense of S. 278 RA, may also appeal rates under S. 23 NTA, which allows the CTC to investigate acts "prejudicial to the public interest" and remove those prejudicial features, (see 2.8.1 above). Neither the conditions for successful appeal nor the redress available are as strictly defined under S. 23 NTA as under S. 278 RA. Grounds for rate appeals in Canada are, therefore, somewhat broader than in the U.S.

3.0 CARRIER PERSPECTIVES

3.1 General

This chapter presents the views of Canadian railways on different aspects of Staggers addressed in our Terms of Reference. We believe that these views are best considered in the context of a number of facts, particular those illustrating the cross-border context of Canadian railway operations. Within Canada, rail freight service is generally provided by CN Rail or CP Rail and there is a tendency for Canadians to regard these railways as ubiquitous, immensely powerful and unchallenged if not unchallengeable. Certainly the railways are important both in our history and in our present economy. Understanding of the real importance of the railways' comments however, we believe is aided by an understanding of factors outlined below.

Revenues

One factor of immense importance is that, while Canada has only two Class I freight carrying railways, Canada and the U.S. combined have more than two dozen such railways. Canada has a dozen or so small railways; the U.S. has hundreds of small, regional lines. Table 3.1.1 compares the freight revenues of U.S. Class I railways (those with gross revenues over $50 million) for the most recent year data was available.

By way of comparison, CP Rail freight revenues for the same period were about $1,409,000 thousand U.S. ($1,761,287 thousand Canadian) while CN Rail freight revenues were about $1,824,275 thousand U.S. ($2,280,346 thousand Canadian). By this measure, Canadian railways are still very large, powerful railway companies, but they are by no means unique. Combining revenues from CN Rail and CP Rail U.S. railway subsidiaries with the Canadian parent companies' freight revenues would not change this fact significantly. Even should CN's subsidiary Grand Trunk acquire the Chicago, Milwaukee and St. Paul Railroad (Milwaukee Road) as now planned, the combined 1982 freight revenues of all these CN Rail associated companies would be only about $2,481,800 thousand U.S. -- less than any of the current five largest U.S. railways. CP Rail and the Soo Line, in which it has a controlling interest, had combined 1982 freight revenues of about $1,686,800 thousand U.S., by this measure ranking ninth in size after CN Rail, Santa Fe Industries and the Southern Pacific.

Trackage

Another measure which could be used to compare U.S. and Canadian railways is track mileage. This is presented for selected railways in Table 3.1.2 below.

By this measure as well, Canadian railways are large but not uniquely so. The Burlington Northern has a greater first line track mileage than any other single railway, even if trackage of CN's current subsidiaries and the Milwaukee Road are added to that of the parent company.

Table 3.1.1

CLASS I U.S. FREIGHT-CARRYING RAILWAYS

RANK	COMPANY	1982 FREIGHT REVENUES ($000 U.S.)
1	CSX	4,554,000[1]
2	Burlington Northern	3,676,038
3	Union Pacific	3,547,876
4	Norfolk Southern	3,247,100
5	Conrail	2,998,580
6	Santa Fe Industries	2,036,697
7	Southern Pacific	1,933,025
8	Illinois Central Gulf	909,920[1]
9	Chicago & N. Western	707,523
10	Chicago, Milwaukee & St. Paul	369,296
11	Kansas City Southern	307,569
12	Denver and Rio Grande	286,211
13	Soo Line	277,775
14	Grand Trunk Western	222,656
15	Guilford Transportation	221,239[2]
16	Missouri Kansas	217,505
17	Central of Georgia	192,231
18	Cincinnati, New Orleans & Texas	147,617
19	Florida East Coast	100,440[1]
20	Alabama Grt. Southern	96,126
21	Detroit, Toledo, Ironton	65,585
22	Elgin, Joliet & Eastern	55,391
23	Duluth, Missabe, & Iron	52,389
24	Pittsburgh & Lake Erie	44,691
25	Long Island	18,960

(1) May include revenues other than freight.

(2) No revenue data available for Maine Central Railway, thus this figure is likely understated.

Source: Moody's Transportation Manual, 1983.

Table 3.1.2

TRACK MILEAGE COMPARISONS

	1982 Total first Line track Mileage
CP Rail	15,219
CN Rail	22,489(1)
Soo Line RR Co.	4,282
Grank Trunk Western RR Co.	955
Chicago, Milwaukee, St. Paul & Pacific RR Co. (Milwaukee Road)	3,562
Burlington Nothern RR Co.	28,973
CSX Corporation	16,487
Norfolk Southern Corp.	5,763
Conrail	15,000(2)
Southern Pacific Trans. Co.	10,537

	1982 Total first Line track Mileage
Union Pacific Corp.	
- Union Pacific RR Co.	9,082
- Missouri Pacific RR Co.	7,537
- Western Pacific RR Co.	na
Sante Fe Industries	
- Atchison, Topeka & Santa Fe Ry.	12,319(2)
Guilford Transportation	
- Maine Central RR Co.	818(3)
- Boston & Maine Corp. (Boston & Maine RR System)	1,508
- Delaware & Hudson Ry. Co.	1,677

Notes: (1) Source: Statistics Canada, Railway Operating Statistics, Feb. 83, Cat. 52-003, Vol. 63, No. 2.
(2) Total Route Mileage.
(3) Total Mileage Operated.

Source: Moody's Transportation Manual, 1983, Moody's Investors Service, Inc., N.Y., N.Y.

Of more importance than simply the amount of trackage owned or operated by a railway is the geographical distribution of that trackage. This will affect the railway's competitive power both in terms of accessing markets and in terms of associated operating costs. The maps at the end of this report indicate the general operating regions of various large railway systems in the United States in relation to mainline trackage of railways in Canada.

It is notable in these maps that a variety of routes are available for shipment of Canadian goods to U.S. destinations, especially destinations in the Southern United States. Depending on the routing chosen, the Canadian portion of the haul may be relatively long or quite short; a very large percentage of haul length may take place on the lines of a single American railway. Parts of the north-eastern United States are served by numbers of rail lines that could offer very severe competition for traffic now moving "overhead" through Canada on Canadian railway lines. In some cases, geography indicates the possibility for competition to move Canadian traffic "overhead" through the U.S. (i.e. between Canadian points via U.S. rail lines).

Currently, Canadian railways offer the only single-line transcontinental routes, hence the only existing possibility of moving goods cross-continent without switching between railways. This undoubtedly has been of some competitive advantage to them vis-à-vis American railways. A large number of mergers have recently taken place in the U.S., however, and more may be expected in future. Truly transcontinental U.S. railways may result from such mergers, increasing the competitive pressure on Canadian railways. This merger phenomenon will be discussed further below.

Value of Traffic

The revenues earned by Canadian railways in transporting freight between Canada and the U.S. are an important part of total Canadian railway revenues. As well, the importance of cross-border traffic is greater in transportation of certain kinds of goods than in others. As equipment is increasingly specialized for transportation of different kinds of goods, changes in cross-border traffic patterns may have disproportionately disruptive or facilitative effects in different industries requiring rail transportation, and in railway transportation planning overall.

Table 3.1.3 gives a more concrete illustration of these effects. Figures in the Table are derived from C.T.C.'s Commodity Flow Analysis publications, and show only revenues accruing to CN Rail and CP Rail. For technical reasons, revenues from certain types of traffic are not included in these analyses and therefore total revenues are underestimated. Additionally, the classification of goods included in different commodity categories is not completely consistent between domestic and cross-border traffic. Also, the publication of this data was not continued after 1980, the year in which the Staggers Act came into effect.

Nonetheless, even with these limitations, the data is adequate to show that one-quarter or more of Canadian railway revenue is derived from

Table 3.1.3

CANADIAN RAILWAY REVENUES
($)

		A	B	C	D	(A + B) ÷ D
YEAR	COMMODITY	FREIGHT TO USA	FREIGHT TO CAN	DOMESTIC*	TOTAL REVENUE	CROSS-BORDER TRAFFIC %
1978	AGRICULTURE	4,145,586	11,950,882	189,417,000[1]	205,513,468	8
	ANIMAL	363,074	335,146	30,923,000	31,621,220	2
	MINES	142,425,455	27,792,045	507,445,000	677,662,500	25
	FOREST	139,118,186	4,198,040	144,514,000	287,830,226	50
	MANUFACTURING & MISC	254,346,462	105,123,821	965,615,000[2]	1,325,085,283	27
	TOTAL	540,398,763	149,399,934	1,837,915,000	2,527,713,697	27
1979	AGRICULTURE	5,503,385	12,005,881	206,904,000[1]	224,413,266	8
	ANIMAL	381,157	300,593	30,670,000	31,351,750	2
	MINES	168,714,581	30,305,872	591,819,000	790,839,453	25
	FOREST	147,618,834	5,674,218	152,944,000	306,237,052	50
	MANUFACTURING & MISC	309,067,140	121,714,583	1,114,621,000[2]	1,545,402,723	28
	TOTAL	631,285,097	170,001,147	2,096,957,000	2,898,243,244	28
1980	AGRICULTURE	6,451,358	13,606,957	223,719,000[1]	243,777,315	8
	ANIMAL	518,901	328,862	33,123,000	33,970,763	3
	MINES	185,325,723	37,616,883	717,896,000	940,838,606	24
	FOREST	148,059,098	6,195,930	171,681,000	325,936,028	47
	MANUFACTURING & MISC	343,128,139	128,039,788	1,232,993,000[2]	1,704,160,927	28
	TOTAL	683,483,219	185,788,420	2,379,412,000	3,248,683,639	27

[1] Includes statutory grain.

[2] Includes piggyback traffic.

Source: Commodity Flow Analysis 1978-80
All-Rail between Canada and United States

cross-border traffic. Also, revenues deriving from export of goods from Canada are between three and four times revenues derived from import of goods into Canada. As well, up to half of forest products revenue depends on cross-border traffic while as little as two or three percent of revenue from transportation of animal products depends on cross-border transportation. Roughly half of total revenue derives from Manufacturing and Miscellaneous traffic, and it is this traffic which is most likely underestimated in cross-border traffic figures used here.

Contract Experience

Table 3.1.4 shows numbers of contracts filed with the I.C.C. by Canadian railways, their subsidiaries, and a Western and an Eastern U.S. railway which compete directly with the Canadian lines for traffic. CN Rail had filed no contracts with the I.C.C. while CP Rail appeared to be making little direct use of this new competitive tool. The subsidiaries of these carriers in the U.S., like competing U.S. lines, made more extensive use of the Staggers provisions for contracting transportation services. Commodities for which contracts were filed tended to be those important in cross-border trade. No exact correspondence can be established, however, as details of contracts are generally published only at the discretion of the contracting parties and so are not generally published at all.

It should be noted that a number of tariffs filed with the C.T.C. are marked as being in accordance with provisions of contracts, and that such tariffs have been filed by, for instance, Conrail, Grand Trunk Western and the Soo Line as well as by CP Rail. There is, however, no way to determine from tariffs filed with the C.T.C. and published reports of the I.C.C. whether tariffs disclosing total rates have been filed for all movements cross-border which may be governed at least partly by provisions of contracts. Indeed, as only proportional rates from the U.S. border are published for fruit and vegetable traffic entering Canada from the U.S., and contracts undoubtedly govern movements of some of this traffic to the Canadian border, some traffic at least must move cross-border at total rates which are not fully disclosed in tariffs. No-one has challenged the legality of such practices, however.

Mergers

The United States Senate Subcommittee on Surface Transportation held oversight hearings on the Staggers Rail Act of 1980 in July and September of 1983. The Hon. Reese H. Taylor, Chairman of the I.C.C., commented on the merger phenomenon at that time. He noted that four major rail consolidations had taken place since passage of Staggers: 1) CSX Corporation's control of the Chessie System and Seaboard Coast Line Industries; 2) Burlington Northern Inc.'s merger with the St. Louis-San Francisco Railway; 3) Norfolk & Southern's control of the Southern Railway and Norfolk & Western Railway; and 4) Union Pacific Corporation's control of Missouri Pacific and Western Pacific. As well, the I.C.C. approved control of the Boston and Maine plus the Delaware and Hudson by Guilford Transportation Industries Inc., which owned the Maine Central. These mergers

Table 3.1.4

CONTRACTS BY COMMODITY GROUP
(Selected Railways)

Railway	Agriculture	Manufacturing	Animal	Mining	Forest	Total
Burlington Northern	76	104	0	58	42	280
Soo Line	22	47	0	17	63	149
Grand Trunk Western	34	32	0	14	7	87
Guilford Transportation	1	7	0	2	40	50
CP Rail	1	3	0	2	7	13
CN Rail	0	0	0	0	0	0
Total	134	193	0	93	159	579

Source: I.C.C. Contract Advisory Service Bulletins (as of July, 1983).

had begun prior to passage of Staggers but I.C.C. decisions and analysis in the several cases utilized the criteria of Staggers nonetheless.

In a prepared statement, the I.C.C Chairman noted to the subcommittee that, "It appears that the current merger movement will continue. The efficiencies and economies resulting from single-line or single-system operations will lead, in all likelihood, to the creation of a few transcontinental systems."

There is certainly evidence that the merger movement in the U.S. is continuing, and that it could have very direct effects on Canada. In one important case, CN Rail's U.S. subsidiary Grand Trunk Corporation has moved to take over the Chicago, Milwaukee, St. Paul and Pacific Railroad (the Milwaukee Road) -- a company which is also a merger target of the Chicago and Northwestern Transportation Co. The final maps at the end of this report illustrate the rail networks that could be created should mergers be approved.

Should the Grand Trunk Corporation acquire the Milwaukee Road, a continuous rail line under the control of the former company would be established which would run from Winnipeg through to Windsor (connecting to CN Rail at each terminus) but passing south of the Great Lakes through the United States. This line could offer certain efficiencies for U.S.-bound traffic and perhaps for certain traffic bound for eastern Canada from the West or Western Canada from the East.

The Grand Trunk Corporation and the Milwaukee Road are both, of course, subject to U.S. rather than Canadian law, and certainly may, and indeed have, signed contracts with various shippers the rate provisions of which may be confidential. According to Mr. Taylor's testimony, the Milwaukee Road is one of the more active railways in the contract area, having filed some 411 contracts with the I.C.C. by mid-June of 1983. Whether any of these contracts applied on goods originating in or destined for Canada is not known. As to whether a merger of these lines would be beneficial to operations of a Canadian rail network or to what extent traffic might be diverted from Canadian lines or made less profitable, we do not know. Clearly, however, such a merger has the potential to affect the Canadian system.

The Soo Line, in which CP Rail has a controlling interest, has recently announced a bid of its own to control the Milwaukee Road. Should this bid be successful, the Grand Trunk Corporation scheme would fall through and a rail network indicated in the Soo Line - Milwaukee Road Map would emerge.

Another recent merger proposal which could affect Canada is that of Santa Fe Industries and Southern Pacific Co. The holding companies controlling the Southern Pacific railway lines and the AT&SF agreed to merge in late December of 1983, retaining active control of one company's lines and placing the other in a blind-trust arrangement subject to I.C.C. hearings and decisions as to whether operational integration of the two railways is permissible.

If the merger of railway operations eventually proceeds, a complex of railway lines shown in the final map would result. This rail network would then join Portland and Chicago to New Orleans and Galveston, with a concentration of lines in the rapidly growing central and western sun-belt states, the destination of considerable volumes of Canadian goods, especially forest products.

As well, no final decision has yet been made as to the disposition to be made of Conrail properties: whether the company will continue to operate as a unified system, be broken up and sold piece-meal or merged with some other railway company. Clearly the merger situation in the U.S. is active and important to Canadian interests but is rapidly evolving rather than settled.

3.2 CN Rail

Marketing officials of CN Rail and Inquiry officers met and discussed issues, and later CN Rail made a written submission emphasizing certain points.

In our meeting, CN officials stated that rates charged different shippers involved in transborder traffic could no longer be accurately known, as confidential rebates were offered on the traffic by American railways. Consequently, rate relationships and particularly parity of rates between U.S. and Canadian shippers had become impossible to establish on international traffic, according to CN.

Officials noted that this was a particularly difficult situation for them in the case of woodpulp, where a CTC decision required that rates be set on a basis of parity with U.S. suppliers. Not only was it not possible for CN to be sure of what those U.S. rates might be when many rates were contained only in confidential contracts, but at least some shippers, they said, had tried to stifle CN's attempts to set parity rates. CN proposals, they said, were stifled by U.S. railways at the request of a large U.S. woodpulp receiver. U.S. woodpulp rates had been adjusted upwards and CN attempts to recognize CTC's directive were negated through Rate Bureau procedures, according to CN.

In their written submission, CN elaborated on the breakdown of these types of traditional rate relationships:

> The concept of traditional rate relationships on joint international through rail freight rates was developed at a time when modal competition was not a major factor in rail transportation. This relationship, in general terms, took two forms:
>
> (i) On Transcontinental traffic, i.e., B.C. and Alberta, to U.S. destinations in the East, South and Southwest, on the one hand, and Washington, Oregon, California, etc. to the same U.S. destinations on the other hand, in many instances due to the market

competitiveness of the major products involved, such as lumber and woodpulp, the rates were, to all intents and purposes, identical. Railways were able to maintain these relationships at the same levels owing to the relatively high rate structures inherent in long-haul traffic. It must also be understood that the costing methods were in their infancy, or did not exist at all. Such measurements as revenue per car mile and per ton mile were used as indicators.

(ii) From origins in Eastern Canada, rates to the U.S. were generally established on a basis reflecting the destination rate level plus 10%. Rates within the U.S. were based on a mileage scale, or reflected a percentage of class rates, or some similar formula. On international rates, U.S. carriers generally agreed to their rate scale plus the above-mentioned 10% which acted as a protection for their producers, and as well provided a somewhat higher rate level to generate the additional revenue required because of the greater number of carriers and the shorter hauls involved.

With the advent of modal competition, the railways' abilities to maintain these types of relationships deteriorated rapidly. Also the development of more sophisticated and accurate costing methods revealed that the maintenance of the traditional relationships was not permissible in certain cases.

(i) With modal competition, if railways were to maintain their traffic volumes, they had no choice but to meet the competition where it existed and they were in no position to deplete their revenues by extending similar rate levels to origins which were not subjected to similar modal competitive factors. At the same time, U.S. connecting railways obviously were in a similar position and would agree to reduce rates only for consideration of competitive factors.

(ii) With more sophisticated costing methods and inflation, railways began to recognize that they could not maintain all of the rate relationships as originally established. The rate differentials between origins, as well as the relationship to the U.S. railroads' rate levels, were found to be impossible to maintain if Canadian railways were to secure contribution on their traffic. As an example, a truck competitive situation from say Portland, Oregon, to Chicago would be found to exist, and rail rates would be reduced accordingly to retain the traffic, whereas similar competitive conditions would not exist from say Prince Rupert to Chicago.

(iii) Compounding this problem was the ever-differing level of inflation in Canada vis-à-vis the U.S. This particular problem brought about the woodpulp disparity case (woodpulp rates from Western Canada to the U.S.), the only instance where the CTC ordered parity to be maintained.

The Staggers' Rail Act of 1980 has further exacerbated the problem as rebate contracts are being issued on many major movements, and it is now impossible to determine what level of freight charges shippers in the U.S. or Canada are actually paying. Briefly, the issue can be reduced to a question: "Parity with what?"

Traditional rate relationships and the concept of parity are now impossible to maintain or enforce.

In light of this situation, CN officials felt that it was inappropriate to allow appeals to the Commission on international traffic under Section 23 of the National Transportation Act. Inasmuch as evidence concerning rates available to shippers of similar goods is necessary to demonstrate that the rate applied to goods of a particular shipper was prejudicial, and such rate evidence was unavailable given confidential contracts, such appeals could neither be successfully proven nor properly defended. CN officials felt, therefore, that use of this section should be denied at least on a temporary or trial basis and preferably on a permanent basis, at least so far as international traffic was concerned. CN had not made any thorough study, however, on what effect, if any, such a suspension regarding international traffic might have on appeals concerning domestic movements. Possibly, CN suggested, it would be appropriate simply to deny appeals under S. 23 on international traffic at the prima facie stage.

Traditional rate relationships were also affected by Staggers, in the view of CN officials, in that removal of railway immunity from United States anti-trust laws following Staggers had created uncertainty about the legality of group rate-making within Canada on international traffic. Consequently, shipper groups such as sulphur producers and pulp producers had been reluctant to negotiate collectively on across-the-board international rate increases with CN and CP; CN and CP were similarly somewhat leary of negotiating collectively with producers.

The reluctance on the part of the shipping industry to negotiate collectively could affect negotiations between railways even where these were "direct connectors" and so protected from anti-trust suits in respect of particular traffic. According to CN officials, as a rate position would not have industry-wide backing when the industry did not negotiate collectively, other railways would tend more to dispute suggested rates. This could result in delays in recovering costs; anticipation of this could result in higher rate demands. As well, the U.S. requirement that only "direct connectors" negotiate rates meant that bilateral agreements must be made with every railway which might be involved in a particular commodity movement. This, too, slowed the rate-making process.

A more efficient way to maintain industry rate structures could still exist, however, despite the difficulties resulting from removal of anti-trust immunity in the U.S. For instance, railways could adapt strategies of following a "price leader". There would be less certainty with such a solution, however, and CN does not believe this solution merits serious consideration.

Effects of route cancellations by U.S. carriers had been mixed, according to CN officials. For instance, some route cancellations by Conrail on eastern lumber traffic had resulted in actual traffic increases to CN. These had come about because CN had efficiently used reload centres and by railing lumber to the centres then trucking to final destination, CN had established more efficient service than was available on the combined CN-Conrail routes previously in existence. This tack would not necessarily be effective, however, where route cancellations affected commodities such as newsprint where excessive handling could result in commodity deterioration. In these cases, CN could be hurt by loss of long-haul routings, shippers could face problems in accessing particular markets, or traffic might be lost to rail entirely and go by truck so that through handling could be obtained. CN claims in fact to have lost in excess of $2 million, mainly on woodpulp, because of the cancellation of long-haul routings to Eastern United States.

CN submitted that it "can only attempt to react by cancelling routes to maximize its revenues. It should, however, be noted that CN's success in this regard is dependent on the degree to which Canadian rules are as relaxed as those with which the U.S. carriers operate. Previous experience indicates that this would be very far from the case".

The possibility of modal shifts from rail to truck was noted as a strong reason to maintain joint rail rates where possible. Where truck was a competitive mode for particular goods, traffic could be lost to that mode if particular routes were closed or great uncertainty existed as to stability of rates. CN had, however, resorted to the use of proportional rates in a number of cases, though not necessarily as a result of Staggers. Proportionals were used on fruits and vegetables before these were deregulated in 1979, as there was little ability to adjust rates upwards in response to market conditions given the then prevailing U.S. regulatory scheme. CN noted however, that no inference should be made that proportional rates bring stability; in fact, they would be CN's last option.

In their submission, CN stated their belief

> "... that the CTC has jurisdiction over the Canadian portion of through rates on international traffic. We do not foresee any change to this aspect as a result of the deregulation of the U.S. rail industry.

> U.S. carriers, even with the pending deregulation of boxcars, can still enter into joint international through rates with Canadian carriers and it is CN's intention to continue to negotiate and publish such rates. However, the U.S. carriers will also have the freedom to withdraw from all or any such boxcar rates as they will not be regulated any more in this regard...
>
> The result for CN of the cancellation of international through rates by U.S. carriers, is that CN would be required to publish proportional rates to or from the International border or on the Canadian portion of a U.S. to U.S. move through Canada. This outcome would cause problems in that there are often many moves from one origin or to one destination through a particular gateway, and a great deal of investigation will be required to determine which rate or rates are published and in effect for each movement.
>
> As well, it will become much more difficult for railways to quote through rates to shippers since it will require the determination of the combination of individual carriers' rates, and the U.S. rates could change on a daily basis. Canadian shippers will have great difficulty in assessing what their competitive rates are, and this will further complicate the formulation and implementation of their marketing strategies.
>
> Furthermore, proportional rates when compared to joint international through rates are known to induce North-South flows of traffic across the border as opposed to the more lucrative East-West and then North-South flows. Canadian railways will be short-hauled to the advantage of U.S. railways.

Secret rebates contained in contracts with American carriers were of concern to CN officials for a variety of reasons. One of these was that rebating tactics could lead shippers to route inefficiently in order to gain lower rates. A possible consequence of inefficient routing was that equipment could be delayed in transit and hence not be available readily for new traffic. In times of equipment shortage, this could be important, especially as more rail traffic moved to the United States from Canada than in the reverse direction.

More importantly, however, secret rebates were of concern because they placed CN at a competitive disadvantage as CN could not, under Canadian law, offer such rebates. As a result, CN could be "short-hauled" by American carriers. That is, shippers could agree to require their traffic to be routed so that the greatest part of the trip was on American railways in return for rebates from those railways. For competitive reasons, shippers might prefer to have amounts of rebates kept secret; even if CN could match the dollar amounts of rebates offered, therefore, American carriers would have an advantage in negotiations with Canadian shippers.

In their submission, CN elaborated on the subject of secret rebates.

> CN's view is that secret, unpublished rebates to Canadian shippers violate the Railway Act, particularly Sections 269(4), 275(4), 289(1) and 380(1).
>
> Although rebate contracts reduce total freight charges for Canadian shippers to something less than the legally published rate, they remove shippers' ability to make firm judgments on the level of freight charges that their competitors in the U.S. and in Canada are paying, and therefore complicate the marketing of their products. This is certainly at odds with the thrust of current transportation policy in Canada.
>
> The practice of secret rebates can, and does, influence traffic to routes of Canadian railways that are less profitable or less efficient. In the long term, this can affect not only gross and net revenues, as a result of being short-hauled, but can affect service and facilities if the division of traffic is of a magnitude that makes interchange points obsolete and forces traffic through other interchange points with inadequate facilities. Unfortunately, rebates often permit the less efficient railroad to secure traffic via its preferred route, which cannot be secured any other way.
>
> Furthermore, secret rebates place Canadian railways at a disadvantage in negotiating rates with shippers and securing traffic, in that U.S. roads have access to Canadian tariffs and have the option to undercut rates. Rates published by Canadian railways are there for everyone to see; U.S. rates on the other hand need not be published. The sections of our Railway Act requiring filing and publication were designed to prevent the very abuses which we see occurring as a result of the U.S. deregulation.

While secret rebates could have efficiency effects which might exacerbate car supply difficulties, other deregulatory measures could have even more impact. Boxcar deregulation could be of grave concern as CN has a grave imbalance with U.S. carriers in terms of loaded and unloaded boxcars. CN is attempting, with good success, to secure bilateral agreements with other railways ensuring maintenance of the status quo -- at least unless 60 days notice of altering it is given -- after January 1, 1984, when boxcar deregulation is to take effect.

CN officials felt that their company was fully capable of meeting any competition offered by American railways on international traffic, however, provided CN was not handicapped in comparison to such railways. That is, if particular public interest requirements were not "hung around the neck of CN", a disadvantage not shared by U.S. lines. In the absence of other action, CN believes that Section 23 NTA appeals on cross-border traffic should be waived.

CN officials had further remarks concerning the necessity for legislation which would allow them to protect their revenue positions vis-à-vis U.S. rail competitors. Among these were: American railways were known to offer rebates to Canadian shippers. In some circumstances, it might be illegal for the shippers to accept such rebates. Due to the nature of the contracts, however, it is difficult or impossible to discover these illegal actions. In short, the law may be practically unenforceable when it is broken by foreign companies. CN officials also noted that they could lose some "bridge" traffic (U.S. - U.S. via Canada) to American competition and that, as this traffic was essentially American traffic, the Canadian law was difficult to apply.

Subsidiaries of CN in the United States probably engaged in all the practices common and allowed under the U.S. law, agreed the officials. This would include payment of secret rebates on some traffic. Such rebates could well apply only on U.S. hauls or U.S. portions of hauls, and might be paid to U.S. shippers or U.S. receivers. It would be difficult to see how this might be illegal under Canadian law. In any event, operations of CN's U.S. subsidiaries were not known in detail to CN officials as the various companies operated in an "arm's length" way. CN stated, however, that "We naturally are aware of rate circumstances but the law is observed by them in the United States on shipments where we are a direct connector on north and southbound movements. To our knowledge, the law is observed by our U.S. subsidiaries in the United States and we are complying with Canadian legislation. The difficulty arises where the two systems of law conflict".

CN officials noted that quantitative measures of effects of U.S. deregulation on CN's business might not be possible or could be misleading. For instance, much of the effect of competition, including that competition resulting from secret rebates, was to reduce profit margins rather than cause actual traffic losses. A further effect could be loss of new traffic to trucks. Effects observable in the current economic climate are not necessarily representative of what will occur in a stronger economy. As well, the regulatory meaning of U.S. deregulation is still evolving.

3.3 CP Rail

In its submission to the inquiry, CP Rail identified ten problem areas which have resulted from U.S. rail deregulation and which are causing a negative impact on its revenues and market opportunities. These problem areas are:

1. The shorthauling of Canadian routes due to U.S. confidential contracts.

2. The loss of CP Rail traffic due to U.S. contracts.
3. The prejudicing of Canadian rail revenues by ConRail route cancellations.
4. The prevention of communication between CN and CP due to fear of the extraterritorial reach of the U.S. anti-trust laws.
5. The curtailing of Canadian overhead traffic due to U.S. confidential contracts containing rebate provisions.
6. The exemption from regulation of U.S. boxcar traffic which will cause a loss of control of Canadian boxcar equipment.
7. The uniform limitation of liability in Canada which leaves Canadian carriers having to bear the claims burden on merchandise lost or damaged in transit.
8. The exemption from U.S. regulation of TOFC (trailer on flatcar) traffic which is causing recourse to proportional rates on international rail movements.
9. The negotiation by U.S. lines of joint international through rates without CP Rail negotiating input.
10. The rate reductions of Canadian carriers due to rebates to shippers by U.S. lines.

CP Rail asserts that one of the major areas where the differences between Canadian and American regulatory rate requirements have caused CP Rail to lose a significant amount of international traffic has been the shorthauling of traditional Canadian longhaul routes due to the freedom of U.S. rail carriers to engage in confidential agreements containing rebates with shippers.

Another area of major concern, CP Rail contends, is the inability of CP Rail and Canadian National to discuss southbound international rate matters collectively, due to the extraterritorial reach of the U.S. anti-trust laws.

CP Rail states that overhead traffic has also been substantially reduced due to the Canadian legal requirements that all rates, even from a U.S. origin to a U.S. destination, be filed with the CTC.

CP declares that, similarly, the uniform limitation of liability which is required by Canadian law has caused Canadian railways to be burdened by many claims for lost or damaged merchandise where the U.S. connecting railway was able to limit its liability by individual contract.

CP Rail's written submission, with the exception of examples which were provided but requested to be kept confidential, is reproduced below:

1. THE SHORTHAULING OF CANADIAN ROUTES DUE TO U.S. CONFIDENTIAL CONTRACTS

Since the rendering of the 1982 ICC decision on railroad transportation contracts (Ex Parte No. 387), U.S. railways can offer confidential contracts containing rebates to shippers in return for the latter's routing traffic via a specific route or gateway. These contracts are not being filed with the C.T.C. despite the explicit directives to that effect described in Sections 286 and 287 of the Railway Act of Canada. Some Canadian shippers are accepting rebates from U.S. carriers on international movements, contrary to Section 380 of the Railway Act. This practice in many cases results in the shorthauling of the Canadian carrier. Examples were provided to show this.

If CP Rail were to cancel the "shorthaul" route (a practice among U.S. carriers which has been allowed recently by the ICC), this would place CP Rail in a difficult position with those among its shippers who are receiving rebates and who could also resort to a Section 23 appeal to prevent the Canadian cancellations.

2. THE LOSS OF CP RAIL TRAFFIC DUE TO U.S. CONFIDENTIAL CONTRACTS

The fact that U.S. railways are allowed to enter into confidential, unfiled contracts has also resulted in the outright loss of international traffic for CP Rail and examples were provided to support this. The amount of revenue lost over the last year gives an indication of the magnitude of the negative impact which U.S. deregulation has had on CP Rail.

3. THE PREJUDICING OF CANADIAN RAIL REVENUES BY CONRAIL ROUTE CANCELLATIONS

In November, 1981, and May, 1982 ConRail cancelled hundreds of joint routes with Canadian railways, since these routes did not provide the former with its longhaul. Some of these cancellations were from ConRail points located in Canada. Had either Canadian transcontinental railway initiated similar blanket cancellations, it is a near certainty that one or several Section 23 appeals would have been taken, accusing them of inhibiting "the development of primary and secondary industry". Yet no legal action was taken against ConRail in Canada, despite numerous examples of curtailed shipping options. Most, if not all of the joint Canadian Pacific/ConRail international through routes which ConRail cancelled were those providing a longhaul for CP Rail. The ICC approved the ConRail cancellations despite legal appeals from both CP Rail and CN Rail, on the grounds that they were not concerned with the Canadian "public interest", only that of the U.S.

A significant loss of longhaul traffic via Eastern gateways has resulted since Western Canadian traffic must now be routed via Chicago when from or to ConRail points. Previously this traffic moved by CP Rail through Canada over CP Rail's Eastern rail gateways, such as Windsor, Ontario. These latter Canadian longhaul routes have been cancelled by ConRail, at a substantial revenue loss per year to CP Rail.

4. THE PREVENTION OF COMMUNICATION BETWEEN CN AND CP DUE TO FEAR OF THE EXTRATERRITORIAL REACH OF THE U.S. ANTI-TRUST LAWS

Because of the extraterritorial reach of the U.S. Anti-trust laws, CP and CN can no longer confer jointly on rate matters involving southbound international traffic, as they had in the past. CP Rail's inability to exchange information with CN has prevented agreement on uniform rate increases, as well as joint implementation of domestic southbound proportional rates to the border, which is allowed by Sec. 279 of the Railway Act. CP Rail cited four examples to support this assertion.

5. THE CURTAILING OF CANADIAN OVERHEAD TRAFFIC DUE TO U.S. CONFIDENTIAL CONTRACTS CONTAINING REBATE PROVISIONS

The flexibility which the U.S. Railroads possess in negotiating confidential rebate contracts makes it difficult for any Canadian carrier to compete on a U.S. to U.S. domestic movement. U.S. shippers have obviously preferred confidential contracts containing rebates rather then the publication requirements which a Canadian railway must insist on (Section 286, 287, 380 Railway Act). Due to the significant differences in legal requirements between Canadian and American freight rates, CP Rail is at a disadvantage when negotiating a U.S. to U.S. movement, a part of which will be carried through Canada.

6. THE EXEMPTION FROM REGULATION OF U.S. BOXCAR TRAFFIC WHICH WILL CAUSE A LOSS OF CONTROL OF CANADIAN BOXCAR EQUIPMENT

A recent ICC Decision (Ex Parte 346(8)) has deregulated boxcar traffic in the U.S., the decision scheduled to become effective January 1984. In the area of equipment, the ICC decision authorized U.S. railways to assess a 35¢ per mile charge for empty movements of boxcars when made at the request of the car owner. U.S. railways are also authorized to store empty cars and reclaim car hire after the third day subsequent to a boxcar's being unloaded.

CP Rail is a net exporter with respect to boxcar traffic. The imbalance, excluding auto parts traffic, is 5 to 1 and it is therefore obvious why CP Rail must supply its own equipment for moves to the U.S. The loaded inbound equipment which CP Rail receives will meet only a small percentage of its equipment requirements. Based on this 5 to 1 ratio, if the 35¢ charge were applied across the board, CP Rail's costs would increase by over $10 million a year. There is no way CP Rail could absorb this type of cost increase without it having to be passed on to its customers. The probable outcome would be that boxcar traffic would be lost to trucks or some other mode.

If CP Rail elects not to pay the aforesaid mileage charge (i.e. does not order the car returned), the U.S. railroad can store the car until it finds a load for it which is destined to, or in the direction of, Canada. During the storage period, no out-of-pocket charges accrue to either the U.S. railroad or CP Rail. CP Rail can expect U.S. roads in the South and Southwest to load CP Rail equipment to U.S. roads that are in the direction of Canada. This will increase CP Rail car requirements but reduce its revenue. In short, CP Rail will need more cars but the incentive to repair equipment or purchase new cars will be reduced.

In encouraging railways to negotiate bi-lateral agreements, the ICC ruling shifts power from the originating road to the destination road. This places CP Rail, with its 5 to 1 traffic imbalance, in a weak bargaining position which could result in either increased costs and/or reduced car supply.

7. THE UNIFORM LIMITATION OF LIABILITY IN CANADA WHICH LEAVES CANADIAN CARRIERS HAVING TO BEAR THE CLAIMS BURDEN ON MERCHANDISE LOST OR DAMAGED IN TRANSIT

Canadian railways are still required to abide by the conditions of liability found on the back of a uniform bill of lading in virtue of CTC General Orders T-5 and T-6. However, the U.S. railways are no longer bound by these same conditions of liability. The exemption of fresh fruit and vegetables from ICC regulations has meant that U.S. carriers can agree with their shippers to any limitation of liability or delay for civil action. However, Southern Pacific has limited its own liability so that U.S. shippers only have a recourse against CP Rail for through movements. Therefore, shippers can sue Canadian railways for the full amount of damaged or lost merchandise, on a joint international movement, whereas they are often prescribed from suing U.S. carriers since the latter have limited their liability by confidential contract.

EXAMPLE (A) - FRESH FRUIT AND VEGETABLES ex California to various Canadian destinations

Without specific approval from the CTC, Canadian railways cannot limit their liability to terms other than the terms specified in General Order T-6.

The Canadian railways have jointly applied to the CTC to amend General Order T-6 to exempt the provisions of the General Orders so as not to apply to such international movements of U.S. deregulated fresh fruits and vegetables. The Canadian lines wish to be allowed to limit their liability to the same extent as the originating or interchange U.S. carrier and/or to have General Orders T-5 and T-6 amended so as not to apply to international movements of U.S. exempt commodities.

8. THE EXEMPTION FROM U.S. REGULATION OF TOFC (TRAILER ON FLAT CAR) TRAFFIC WHICH IS CAUSING A RESORT TO PROPORTIONAL RATES ON INTERNATIONAL RAIL MOVEMENTS

The exemption from regulation of TOFC/COFC traffic in the U.S. has encouraged several changes by U.S. carriers in their approach to intermodal traffic. The result has often been a shift of international movements to TOFC to the U.S./Canadian border, and truck beyond. This shift toward TOFC has caused a decrease in CP Rail revenues, primarily from the Southeast U.S. in commodity groups such as:

1. Peanuts
2. Furniture
3. Pulpboard
4. Wrapping Paper
5. Clay and Other Mine Products in Bags
6. Phosphates and Phosphatic Products in Bags
7. Charcoal Briquets

U.S. railways such as Norfolk Southern and ConRail both have TOFC facilities in Canada, i.e., Welland and Niagara Falls (Montrose), Ont. respectively. The rail charges to these facilities plus the motor carrier's charges to haul these trailers over the highway to major markets in the provinces of Ontario, in particular Toronto, have resulted in a substantial shift of traffic that CP Rail previously handled via Detroit, Mich. Traffic shifted is that which these carriers originate or receive from other U.S. rail carriers either in rail or trucking interchange. While these facilities were established prior to deregulation, the freedom these carriers have to offer incentives through rebates to shippers for continued use of these facilities will make it that much more difficult for CP Rail to regain traffic via Detroit.

9. THE NEGOTIATION BY U.S. LINES OF JOINT INTERNATIONAL THROUGH RATES WITHOUT CP RAIL NEGOTIATING INPUT

Inasmuch as Sections 275 and 380 of the Canadian Railway Act respectively require that all rates involving Canadian routes be published and prohibit confidential rebates, CP Rail cannot join with its U.S. connectors in soliciting or negotiating confidential rebate contracts, which are now legally allowed in the U.S. Therefore, CP Rail cannot participate in the contractual negotiations with U.S. shippers concerning joint international through movements, since these contracts are not filed with the CTC. CP Rail does negotiate its revenue requirements with the U.S. carriers involved in the movements, but is obliged to act as a bystander, when the confidential contracts are negotiated. CP Rail has been hurt when the U.S. road(s) have not done a good job in negotiations.

10. RATE REDUCTIONS OF CANADIAN CARRIERS DUE TO REBATES TO SHIPPERS BY U.S. LINES

The revenues of CP Rail have been reduced due to the obligation to meet U.S. competition, which has been characterized by substantial rate reductions.

Example - Lumber from the Kootenays, B.C. to various U.S. destinations

In the deregulated environment, established by the passage of the Staggers Act in the U.S., BN appeared initially to follow a rate-setting philosophy that took advantage of their size by publishing single line tariffs between O/D pairs on their line that significantly undercut existing TCFB tariffs. For lumber, a new tariff (BN 4494) established new competitive truck/rail rate levels for many of CP's lumber mills within trucking distance of the BN.

CP and CN reacted by publishing tariffs 4025 and 4171, respectively, in conjunction with connecting U.S. carriers; these tariffs matched the truck/rail competition. CP Rail's reaction preserved the majority of the existing CP Rail business. Because of the complexity of this tariff and the need for connecting carrier concurrence on both rate level and basis of division, there was inevitably some delay in matching BN's rate levels, and in fact expansion of the coverage of this tariff is still continuing.

The BN's publication of its new rates enabled CP to react and retain traffic; however CP Rail revenue was reduced by a substantial percentage. While CP was able to negotiate improved divisions of the new rates the profitability of the traffic also suffered.

Recently, since the expansion of the BN by merger with the "Frisco", a new BN tactic has become evident. BN has agreed, as a rate bureau member, to implement a five percent increase on TCFB rates and has also increased its single line tariff rates (4494). It has, concurrently, begun a campaign of offering rebates or routing allowances to CP Rail shippers in the Kootenays. It is believed that these allowances are in the $200 to $250/car range on lumber shipments and are thus sufficient to make the "truck to BN" routing option again attractive to CP shippers.

One other feature that has recently come to light is the fact that several of these rebate contracts contain escalation clauses. In other words, if a through rate is increased by 10%, the amount of the rebate is escalated accordingly.

There are two possible CP Rail responses (under existing Canadian regulation) to this competitive threat.

1. Do nothing, thus allowing BN to siphon off CP traffic from near border shippers, but maintain at existing rate levels and profitability that traffic where the economics do not favor truck movement to the BN.
2. Estimate the levels of BN allowance and republish CP tariff 4025 for lumber at the new competitive rate levels for all shippers. This approach would likely retain the traffic in the short term with further reduction in revenue and profitability but would likely not end the matter since the "publication" required by CTC regulation would simply provide a new, highly visible price target for the BN.

Neither of these options are attractive to CP and the latter amounts to getting into an auction with the BN where only the CP bids are public.

RECOMMENDATIONS SUBMITTED BY CP RAIL

1. CP Rail contends that a more aggressive attitude should be maintained by the CTC in requiring U.S. carriers to respect Canadian law on international movements. This would mean requiring U.S. carriers to respect

the requirement to file their rebates with the CTC in virtue of Sections 286 and 287 of our Railway Act. It would also mean not allowing Canadian shippers/receivers to receive rebates from U.S. railroads.

CP Rail further asserts that if it is not possible to stop U.S. carriers from making unfiled rebates to Canadian shippers, the CTC should rule whether or not Section 380 is being violated by Canadian shippers accepting such rebates.

2. CP Rail would like to see its ability to discuss international traffic with the CN reinstated with immunity from the U.S. anti-trust laws. CP Rail submits that the CTC should put pressure on the ICC and U.S. Secretary of State to render a decision on the "CN/CP Agreement", which has been under deliberation for over two years.

3. It is the opinion of CP Rail that the uniform limitation of liability issue should be resolved, allowing Canadian railways to limit their liability contractually on international movements to the same extent as the originating or interchange U.S. carriers.

4. CP Rail declares that CTC action should be taken to protect Canadian "public interest" when U.S. railway cancellations on Canadian soil limit Canadian shipping options.

5. CP Rail exhorts the CTC to make formal intervention before the ICC and U.S. Secretary of State so as to have Canadian railways excluded from the boxcar deregulation decision.

6. CP Rail is of the opinion that the CTC should extend to Canadian railways the ability to rebate on overhead U.S. to U.S. traffic on the grounds that this matter does not affect Canadian shippers or receivers. CP Rail submits that Section 287 of the Railway Act should therefore be modified as follows:

> "With respect to all traffic that is carried from any point in a foreign country into Canada, by any continuous route owned or operated by any two or more companies, whether Canadian or foreign, a joint tariff for such continuous route shall be duly filed with the Commission. R.S., c. 234, s. 344."

Section 287 of the Railway Act currently reads:

> "With respect to all traffic that is carried from any point in a foreign country into Canada, or from a foreign country through Canada into a foreign country by any continuous route owned or operated by any two or more compagnies, whether Canadian or foreign, a joint tariff for such continuous route shall be duly filed with the Commission."

The proposed change would therefore entail the deletion of the words "or from a foreign country through Canada into a foreign country".

3.4 U.S. Railways

U.S. railways were not contacted directly by inquiry officers. However, for a number of reasons at least a brief examination of impacts and responses to Staggers within the U.S. is necessary to judge the impacts of that legislation in Canada. First, Canadian railways have considerable investments in U.S. railway companies and so may be directly affected by U.S. legislation even if Staggers had no effect on Canadian operations. Second, the condition of U.S. railway operations affects the traffic of Canadian shippers to markets in the U.S. Third, only where Staggers provisions have been judicially clarified and interpreted in the U.S. do we have a firm basis for estimating the efficacy of legislative or regulatory measures which might be taken in Canada to supplement, complement or counteract provisions of Staggers affecting Canadian shippers and carriers.

General Effects on Railways

The general intention of Staggers was to maintain the viability of the U.S. rail system, especially that part in the North-East which had experienced the gravest difficulty financially. This included many bankrupt or near-bankrupt lines which had been combined in the Consolidated Rail Corporation (Conrail). The success of the Act in these terms can be seen in the increase in Net Rail Income noted in Table 3.4.1.

Improvements in income occurred despite a very severe fall-off in traffic due to the economic recession, as noted in Table 3.4.2. A part of this improvement is accounted for by savings in payroll expenditures noted in Table 3.4.3 resulting from government, company and union agreements. A very large part of the improvement has been attributed to pricing and operating flexibilities allowed by passage of Staggers.

Table 3.4.1

NET RAIL INCOME - U.S.
($000 U.S.)

	United States	Eastern District	Southern District	Western District
1979	938,254	(96,157)	382,599	651,812
1980	1,191,519	8,170	454,627	728,722
1981	2,041,265	458,433	519,812	1,063,020
1982	1,151,548	278,760	390,630	482,158

Source: Railroad Facts, 1983 Edition, Association of American Railroads.

Table 3.4.2

U.S. REVENUE CARLOADINGS — MAJOR RAILROADS

	United States	Eastern District	Southern District	Western District
1979	23,891,735	7,397,141	6,033,216	10,461,378
1980	22,597,816	6,701,952	5,878,728	10,017,136
1981	21,612,363	6,434,613	5,626,909	9,550,841
1982	18,550,199	5,438,901	4,880,862	8,230,436

Source: Railroad Facts, 1983 Edition, Association of American Railroads.

Table 3.4.3

EMPLOYMENT, PAYROLL AND EARNINGS, U.S. RAILWAYS

			Earnings Per Employee	
	Number of Employees	Compensation (thousands)	Per Year	Per Hour
1979	482,789	10,903,887	22,585	9.22
1980	458,994	11,318,453	24,659	10.21
1981	436,397	11,650,802	26,698	11.14
1982	378,906	11,021,403	29,087	12.26

Source: Railroad Facts, 1983 Edition, Association of American Railroads.

Contracts

Provisions of Staggers permitting confidential contracts are of particular importance to Canada. U.S. railways have been very active in utilizing these provisions since the Act's passage, as noted in Table 3.4.4. The volume of traffic governed by these contracts or by the total more than 8,000 contracts already filed with the I.C.C. cannot be estimated from published information, however, and is not necessarily proportional to the number of contracts filed by particular railways. Nor can the number of contracts or volume contracted which involve traffic of Canadian origin or destination be so determined.

Table 3.4.4
NUMBER OF CONTRACTS FILED WITH I.C.C. BY SELECTED RAILWAYS
(as of June, 1983)

Railway	Contracts
Chicago North Western	1,716
Southern Pacific	1,081
Union Pacific Group	933
ConRail	477
Burlington Northern	477
Milwaukee Road	411
Missouri-Kansas-Texas	289
Norfolk Southern	286
Santa Fe	277
Soo Line*	149
Grand Trunk Western*	87
Guilford Transportation Industries*	50
CP Rail*	13
CN Rail*	0

Source: Testimony of Hon. Reese H. Taylor, Chairman, ICC at U.S. Senate Oversight Hearings except * from ICC Contract Advisory Service Bulletins.

The I.C.C. issued final rules for filing contracts (Ex Parte No. 387) effective January 4, 1983. The rules have been challenged in U.S. Court of Appeals, however. According to the I.C.C.'s Chairman, matters at issue include information available in publicly available contract summaries. The I.C.C. Chairman has himself remarked that he feels rates are an essential term of contracts which ought to be publicly available in published summaries, but was in a minority when Ex Parte No. 387 was decided.

Joint Rate Cancellations

In a report (Ex Parte No. 427) to Congress dated November 12, 1982, the I.C.C. noted that cancellation of joint rates was the Staggers provision utilized for dealing with joint rate problems that had the greatest overall economic impact on shippers and connecting carriers. In testimony at Congressional oversight hearings, I.C.C. Chairman Hon. Reese H. Taylor stated that 24 and 15 cancellations had been protested to the I.C.C. in fiscal 1982 and the first half of fiscal 1983 respectively. While the numbers of cancellations protested was relatively small, some of these were of very broad application. The I.C.C. is currently conducting a study of the joint rates issue.

In an important related case, cancellations by Conrail which closed thousands of routes in 1981 were approved by the I.C.C. but appealed to the U.S. Court of Appeals. That court decided April 4, 1983, that the I.C.C. was wrong in approving the cancellations on the evidence presented and that Conrail had not shown that public interest criteria were met in the case. New proceedings in the case are now in progress at the I.C.C.

Joint Rate Surcharges

By Ex Parte No. 448, decided September 26, 1983, the I.C.C. extended the right of railways to unilaterally impose surcharges on joint rates until September 30, 1984. The right under 49 U.S.C. 10705a(a) had been scheduled to expire September 30, 1983, but extension was requested by Conrail. Conrail's request was supported by a number of railway associations and individual railways including the Central Vermont Railway, Inc., part of Canadian National's U.S. holdings.

In testimony at oversight hearings, Chairman Taylor remarked that 117 surcharges and negative surcharges had been imposed under these provisions in fiscal 1982, generating about $11.4 million in revenue for railways doing the surcharging. He stated that, "While totals for fiscal year 1983 are not yet available, it appears that the level of activity has increased."

Exemption From Regulation

The I.C.C. has exempted from rate regulation Trailer On Flat Car/Container On Flat Car (TOFC/COFC) traffic, Agricultural commodities (except grain, soybeans, and sunflower seeds), liquid iron chloride, iron sulphate, hops, and, by decision of November 30, 1983, frozen food. As well, various other transactions including abandonments of short line segments, lease and trackage rights agreements and mergers of subsidiaries into parent companies have been exempted from regulation by the I.C.C.

In addition to commodities exempted from rate regulation noted above, two quite controversial rate regulation exemptions of recent effect have been made: Export Coal (Ex parte No. 346 (sub-No. 7), effective September 12, 1983), and Boxcar Traffic (Ex parte No. 346 (sub-No. 8), effective January 1, 1984). The I.C.C. Chairman dissented from the majority of Commissioners in both cases.

The Export Coal decision has been protested by the coal industry, as it effectively makes rates on coal to be exported from U.S. ports decidable by bargaining between coal companies, ports and railway companies without recourse to I.C.C. Canadian Pacific has petitioned the I.C.C. to include coal exported from the U.S. to Canada by rail to be included under the Export Coal decision.

The Boxcar decision exempts all commodities moved in boxcars except non-ferrous recyclables from rate regulation. In addition, the decision allows railway companies effectively to refuse to pay per diem charges on empty boxcars after a limited time and to charge owners a mileage fee for return of empty boxcars if agreements are not otherwise arranged.

Canadian carriers have joined many U.S. railways, car leasing companies and shippers in appealing the I.C.C.'s boxcar decision to the U.S. Court of Appeals which will likely hear the case in early summer of 1984 and may publish a decision by early fall. In a November 30, 1983 decision by the I.C.C., the Commission stated explicitly that "Through movements with Canadian carriers should not be excluded. Canadian National Railway Company and Canadian Pacific Limited assert that the exemption will be 'incompatible' with the Canadian scheme of regulation. But the Canadian carriers have not explained how the alleged incompatibility would disrupt international traffic."

Anti-trust Immunity

In a decision dated December 28, 1983, the I.C.C. refused a petition to delay the application of Staggers' "Direct Connector" requirement to general increases in joint rates. Railways have protested that this may make joint rate tariffs impossible to produce in any timely way; however, the I.C.C. denies this to be the case. The I.C.C. decision suggests that negotiations may be expeditious or a new method of independent joint-factor rates may evolve; the decision also supports setting proportional pricing instead of joint rates.

Other

The I.C.C. has brought out numerous rule-making procedures and rate-decisions since passage of Staggers, many of which relate to rates or guidelines whereby decisions on rate appeals may be made. Many of these have been revised and some have been challenged in Appeal Court.

A series of Congressional Oversight Hearings were held during 1983 to examine the I.C.C.'s implementation of Staggers. While many suggestions were made at these hearings for changes in the Staggers Act, particularly to strengthen its pro-competitive provisions, it does not appear likely that any changes to the Act itself will be made in the near future. However, it was frequently remarked at the hearings that the thrust of interpretation of Staggers could be changed by I.C.C. decisions. To date, the Chairman of the I.C.C. has often been opposed to a majority of members in major decisions; new commissioners are expected to be appointed within the next year, however.

4.0 SHIPPER AND TRADE ASSOCIATION PERSPECTIVES

4.1 General

The United States is Canada's largest trading partner, and, as shown in Table 4.1.1, rail transportation is important in both export and import trade with the U.S. About one sixth of all Canadian exports and over one quarter of Canadian exports to the U.S. by value were carried by rail in each year shown. About ten per cent of total imports -- 15 per cent of imports from the U.S. -- moved by rail. The total value of goods exchanged by rail between Canada and the U.S. was about $20.5 billion in 1980, equal to about 7.5 per cent of Canada's Gross Domestic Product in that year. Revenue to Canadian railways from transportation of these goods totalled about $870 million or under one third of one per cent of Canadian GDP in the same year.

Inedible Fabricated Materials and End products were the most important categories of goods included in cross-border trade carried by rail, as shown in Table 4.1.2. Within these broad categories, particular products and industries account for large proportions of the total trade. Some of the most important export items, their value and approximate value to the Canadian railway industry in terms of revenue generated from cross-border movements, are shown in Table 4.1.3. Exact matches between export value statistics and railway revenue statistics are not possible due to differences in commodity category coding. However, the Table gives an approximate idea of the relative value to exporters and railways of more particular commodities.

One measure of demand for railway equipment generated by cross-border commodity traffic is tonnage delivered to U.S. rail carriers. This is given in Table 4.1.4 for selected commodities. As different classification systems are used in Commodity Flow Statistics and Statistics Canada figures, correspondence between commodity types shown in Table 4.1.3 and Table 4.1.4 is again only approximate. It is notable, however, that the commodity groups shown in the two Tables account for about 80 per cent of value of goods exported to the U.S. by rail, 87 per cent of Canadian rail revenue generated from transport of those goods and two thirds of tonnages delivered to U.S. rail connections in 1980.

Shippers and shipper associations interviewed by inquiry officers do not represent a scientific sampling of all industries engaged in cross-border trade. They do, however, include representatives of industries in major commodity groups important to the trade from across the country.

4.2 Alcan Smelters and Chemicals Ltd.

A written submission was received from Alcan Smelters and Chemicals Ltd. In it, they stated that the U.S. was their largest single market and that they were, therefore, extremely concerned and interested in any changes affecting either international rail rates or service.

Table 4.1.1

RAIL TRANSPORTATION AND INTERNATIONAL TRADE
($000 Canadian)

A) CANADIAN EXPORTS

YEAR	TOTAL	TO U.S.	TO U.S. BY RAIL
1979	65,641,259	44,534,675	12,981,2651
1980	76,158,600	48,173,723	13,389,730
1981	83,677,966	55,378,174	14,801,285

B) CANADIAN IMPORTS

YEAR	TOTAL	FROM U.S.	FROM U.S. BY RAIL
1979	62,870,705	45,571,224	6,819,346
1980	69,273,844	48,613,642	7,111,460
1981	79,129,353	54,350,280	7,709,004

Sources: Exports-S.C. 65-202; Imports-S.C. 65-203; Rail data based on special computer run by Statistics Canada, External Trade Division.

Table 4.1.2

VALUE OF CROSS-BORDER TRADE CARRIED BY RAIL BY COMMODITY TYPE
($000 Canadian)

A) CANADIAN EXPORTS

YEAR	FABRICATED MATERIALS INEDIBLE	END PRODUCTS INEDIBLE	OTHER	TOTAL
1979	8,231,710	4,217,125	532,430	12,981,265
1980	8,807,362	4,113,313	469,055	13,389,730
1981	9,474,693	4,831,269	495,323	14,801,285

B) CANADIAN IMPORTS

YEAR	FABRICATED MATERIALS INEDIBLE	END PRODUCTS INEDIBLE	OTHER	TOTAL
1979	1,446,973	4,635,140	737,233	6,819,346
1980	1,431,366	4,881,941	798,153	7,111,460
1981	1,527,544	5,426,841	754,619	7,709,004

SOURCE: Statistics Canada, External Trade Division

Table 4.1.3

VALUE OF RAIL TRAFFIC TO U.S. BY COMMODITY GROUP, 1980
($000 Canadian)

EXPORT COMMODITY (CODE)	EXPORT VALUE	CANADIAN RAIL REVENUE GENERATED	RAILWAY COMMODITY (GROUP)
Fertilizer & Fertilizer Materials (416)	709,845	191,844	Fertilizers, Potash & Sulphur (65, 13, 14)
Lumber (331)	1,178,749	142,168	Lumber (27)
Wood Pulp & Similar Pulp (340)	1,615,445	91,763	Wood Pulp (52)
Paper for Printing (351)	2,192,067	84,140	Newsprint Paper (53)
Passenger Auto & Chassis (581)	1,616,842	6,332	Passenger Automobiles (39)
Trucks & Truck Chassis (583)	910,085	11,034	Freight Automobiles (40)
Motor Vehicle Parts & Engines (589 & 588)	768,935	5,150	Vehicle Parts (43)
Aluminum & Alloys (451)	669,378	8,504	Aluminum (34)
Other Petroleum & Coal Products (439)	405,119	33,407	Liquified Petroleum Gas (46)
Hydrocarbon Derivatives, Plastics and Synthetic Rubber (406,423)	181,787	12,467	Other Chemical and Plastic Products (51, 64)
Copper, Zinc & Alloys (452, 457)	381,328	7,182	Copper and Non-ferrous Metals (35, 36)

Sources: Export Value: S.C. 65-202, Exports Merchandise Trade
Rail Revenues: CTC Traffic & Tariffs Branch, Commodity Flow Statistics.

Table 4.1.4

METRIC TONNAGES OF SELECTED COMMODITIES DELIVERED TO U.S. RAIL BY CANADIAN RAILWAYS (1980)

COMMODITY (CODE)	METRIC TONNAGE
Fertilizers & Fertilizer Materials (418)	1,170,893
Potash (416)	6,000,366
Sulphur (288,290)	1,559,908
Lumber (308)	4,194,489
Wood Pulp (330)	3,117,772
Newsprint (334)	3,576,437
Passenger Autos (554)	292,140
Freight Autos (558)	286,676
Vehicle Parts (556)	605,464
Aluminum (480)	573,939
Liquid Petroleum Gases (450)	1,451,990
Other Chemicals and Plastics	*
Copper and Non-ferrous Metals and Alloys (482-494)	333,273

*Due to variety of possible categories to be included, no tonnage estimate made.

Source: SC 52-205, Railway Freight Traffic.

Since enactment of the Staggers Rail Act of 1980, they said, their pricing experience has been very positive because of the competition generated between Canadian railways as well as between U.S. railways. Although the recession has undoubtedly intensified competition and increased shipper benefits, Alcan received substantial benefits even before the recession started. These benefits resulted both from competition within the railway industry and the railways' reaction to increased international highway competition following enactment of the Motor Carrier Act of 1980.

Alcan stated that their overall savings greatly outweighed the occasional instance of increased costs due to line abandonments and the creation of new short lines. Similarly, much faster rate negotiation and publication procedures more than offset the slight increase in their tariff costs.

According to their submission, there has been no significant change in international rail service provided to Alcan. The majority of route cancellations affecting Alcan have affected less efficient and more circuitous routes. In some cases, service improvements had occurred.

Although Alcan expressed pleasure with the initial effects of the Staggers Rail Act of 1980, they noted that both Canadian railways and shippers are at a disadvantage with their U.S. competition due to the difference between Canadian and U.S. law. U.S. law permits confidential rail contracts and rebates and requires competition between railways all of which are contrary to current Canadian law. It is extremely unlikely, according to Alcan, that U.S. law shall be changed to accommodate Canadian competitive disadvantages. Nor would Alcan like to return tc pre Staggers days, and forego the previously outlined advantages which have resulted from competition between railways.

A possible solution suggested by Alcan is to modify Canadian law to make confidential contracts and rebates permissible for both international and domestic Canadian rail rates. This would provide all U.S. and Canadian railways and shippers with equal opportunity. Alcan had originally felt that confidential contracts and rebates need only be permissible for international rail rates, however, they stated that such action would only transfer the current Canadian carrier and shipper disadvantage from the U.S. to the Canadian market.

Alcan commented on boxcar deregulation only to the extent that they would have preferred any further deregulation be on a commodity rather than an equipment basis for administrative purposes.

4.3 Board of Trade of Metropolitan Toronto

Inquiry officers met with members of the Board's "Physical Distribution and Customs Committee". A formal submission on behalf of the Board was not received in time for inclusion here. However, we understand that that formal submission, in addition to addressing many of the issues raised in discussion, will suggest that any consideration of response to effects of Staggers be linked to re-consideration of Section 279 of the Railway Act.

At the meeting, much of the discussion centred on the legal position of Canadian shippers taking advantage of certain provisions of Staggers, especially those allowing secret rebating. By Staggers, shippers were enabled to engage in contract negotiations with U.S. railways whereby secret rebates could be obtained. To maintain their U.S. markets, Canadian shippers must take advantage of any tool available to lower transportation costs if that tool was available to American competitors, said some members. Acceptance of secret rebates was apparently illegal in Canada, however, and members felt that the Canadian shipper was in a dilemma which the government should resolve, as acting in compliance with American law -- the law prevailing in the market place -- could place Canadian shippers in the position of acting contrary to the Canadian law.

Among the points related to this matter which were raised was the reluctance of Canadian railways to offer rates comparable to those available from U.S. railways under contract provisions. A railway representative noted that competitive rates could be offered, but confidentiality of rates meant that they did not necessarily know what rates they were expected to meet.

It was mentioned that Canadian law did not forbid rebates or special rate arrangements per se but only secret or confidential rebates or rates. Canadian railways were able and willing to publish special arrangements tariffs if necessary. The issue was then one of confidentiality, at least to some degree. A member commented that, inasmuch as special arrangements tariffs were not cross-indexed to commodity tariffs or agreed charges, the Canadian arrangements might be effectively confidential due to the difficulty of discovering their existence and relevance.

It was pointed out that in some industries (and indirectly in all industries) the receiver of goods pays the freight. Some members noted that in some cases U.S. customers were specifying routings in accordance with contracts they were believed to have signed which contained secret rebate provisions. While in effect this might defeat the published through rate, it was legal in the United States and would not seem to be within the jurisdiction of Canadian law.

In some cases, such as Plan II 1/2 piggy-back where a broker bought piggy-back transportation "wholesale" from railways and sold it "retail" to individual shippers, rebates could be paid to the brokers who were neither shippers nor receivers. Again, noted some members, it was not clear if the Canadian law would be broken in these cases; it would, however, seem to be defeated.

A railway officer present noted that a solution which would permit both rate publication in Canada and rate secrecy in the United States would be substitution of proportional rates to the border for current joint through rates. This would mean the loss of benefits from the currency surcharge agreements on cross-border traffic, however. Also, proportional rate combinations were traditionally more costly than joint through rates. As well, with proportional rates applying on both sides of the border, rates could change daily which could be a problem for some shippers, especially (but not limited to) shippers in highly volatile markets.

A number of members favoured changes in Canadian law to permit Canadian railways and shippers to be direct parties to confidential contracts on Canada-U.S. traffic with provisions for unpublished rates. Support for such provisions was somewhat guarded, however, as other aspects of transportation law could be affected and the effects of contract rate-making in an expansionary economy were unknown and could not be clearly anticipated.

An advantage, in changing Canadian law would be that the legal position of shippers engaging in such contracts would be clarified and Canadian as well as American railways could become participants — which might result in lowered rates on the total movement, not just the American portion.

In this connection, a case was cited where, in the past, railways had had a monopoly on Saskatchewan potash shipments to the U.S. The monopoly was broken by one shipper who began a private truck operation crossing the U.S. border when Canadian railways would not reduce rates. Subsequently, the railways reduced rates from other points. This was said to illustrate that existence of a real alternative transportation company or system helped to gain rate concessions from the Canadian railways and that this was beneficial to shippers even when the actual rate applicable on the alternative transportation was not known. In addition, it was stated that the shipper had accomplished as good a result as might have been gained through an application under Section 23 of the National Transportation Act but at less expense in time and money.

Against the proposal to change Canadian laws to permit confidential contracts, it was suggested by a railway representative that small shippers would be at a disadvantage under contract rates as they were unable to guarantee tonnages which could result in lower rates. A representative of a high-volume shipper remarked, however, that he knew of instances where American railways had offered shippers incentive rates in contracts on a percentage of shipment basis, similar to agreed charge contracts in Canada. These were offered to small shippers in at least some cases. Another high-volume shipper noted that protection of the small shipper should not be the only consideration. His company felt that secret rebates might be beneficial to them without exposing railways to the necessity of offering reduced rates to all customers, who might cite the high-volume shipper's rates in support of their demands for reduced rates.

It was remarked that acceptance of confidential contract rates on international traffic could make appeals under Section 23 N.T.A. impossible to win. Proving unfair discrimination in rates would normally require demonstrating the rates applicable on similar types of traffic; this would be impossible if all rates were unpublished. It was also suggested that this problem would not be limited to international traffic even if confidential contracts were permitted only on international traffic. A Canadian domestic shipper might want to claim unfair treatment prejudicial to the public interest in rates offered an American competitor in a Canadian market but would be unable to amass the required proof.

It was suggested that equipment problems had occurred in the past when economic booms had occurred. One member suggested that these problems might be exaggerated under new U.S. rate freedoms, countering the benefits now attributed to Staggers but possibly resulting only from over-capacity. Other members suggested that service could be guaranteed as a contract provision and it would depend on whether shippers had made contracts of adequate duration.

An issue of some concern was that limits of liability claims and claim periods were now uncertain for certain U.S. traffic, particularly piggy-back traffic. A need for uniformity in regulation, particularly as to bill of lading comparability was expressed by a member. It was suggested that Canadian railways might be liable for damages occurring on U.S. lines while U.S. carriers escaped that liability by making use of *Staggers* provisions.

Route cancellations were mentioned as having two main effects by the railway representative present: elimination of circuitous routes, which was thought beneficial from a car supply point of view, and diversion of long-hauls from one carrier to another, which was thought more often a disbenefit to Canadian railways. On the whole, the railway official felt such cancellations to be more hurt than help.

A number of members present stated that they had felt no particular impact of Staggers as yet and were uncertain of whether they would likely feel any in the near future.

4.4 Canadian Chemical Producers' Association

An official submission from The Canadian Chemical Producers' Association was not received in time for inclusion in this report. However, inquiry officers met with a group of CCPA members.

Within the CCPA, there was a great diversity of membership as companies could have only one or a number of plant locations, could produce only one or a diversity of products, could be located in the West and designed primarily to serve Pacific Rim of Central U.S. export markets or could be located in the East and designed primarily to serve domestic Canadian markets. Sometimes a single company, organized into a number of profit centres, might present perspectives on problems from almost as many different viewpoints as could be found in the industry as a whole.

Representatives who met with inquiry officers presented a great divergence of positions on many issues. There seemed to be general agreement on perhaps three points: Approval of government consultation with industry before making legislative changes; Acknowledgement that *Staggers* had provided rate benefits to Canadian shippers at least in the short run; and that intra-modal as well as inter-modal competition should be increased in Canada, as it had been in the United States through Staggers.

Several representatives agreed that, effectively, collective rate-making on cross-border traffic was "dead" wherever it had existed, partly due to shipper/railway fear of effects of lost anti-trust immunity, but more importantly because intra-modal competition provided shippers with rate and service benefits they could not gain from collective action.

A representative noted that loss of parity relations in rail rates or other forms of equalizing freight rates would not be so much a disadvantage as simply a change. That member's company had experienced positive rate effects from Staggers and expected that the long-run result would be a lower average cost for rail movements in the U.S., despite the possibility that rail consolidations in the U.S. could result in fewer branchlines and possible service decreases in the future. He noted that 10 to 15 per cent of his company's chemical revenues were spent in distribution and, with total revenues of $650 million/year or more, savings in distribution costs were of considerable interest.

Several others echoed these sentiments and noted that their companies had increased interest in transportation in recent years because the contribution of low-cost transportation to the financial health of the company was increasingly apparent. In this context, all agreed that American companies were at an advantage in having confidential contract rates in that country when Canadian rates were obliged to be published. Those present were not entirely in agreement, however, that this advantage should be countered by allowing Canadian shippers to make confidential contracts on rates with Canadian railways.

An important advantage to U.S. firms was that Canadian delivered costs could be estimated more accurately than U.S. ones for firms competing in the same markets, as U.S. firms would know Canadian transportation costs and need estimate only production costs. Canadian firms would have to estimate both production and transportation costs of their rivals when trying to determine competitive delivered price. The U.S. firms bidding on contracts had better chances of winning the contracts as a result.

Whether the contract was lost or not, the profitability of the Canadian company could be affected. In order to keep customers, Canadian shippers would tend to bid on the basis of low estimates of alternative U.S. suppliers' bids. Profitability would therfore be lowered even if business were retained.

As the rate paid on the U.S. portion of hauls originating in Canada could be confidential, establishing the longest part of the haul (and therefore the greatest percentage of the cost) on the U.S. side of the border could be important to Canadian shippers. Where both U.S. and Canadian chemical producers were competing for Canadian markets, the Canadian supplier would be at a complete disadvantage to the U.S. supplier as not even part of his transportation costs would be confidential.

A company representative remarked that these factors could be important even where the Canadian company was affiliated with an American company which was the alternate supplier. As the multi-national firms were organized as distinct profit centres, rates for shipments were kept confidential even from affiliated companies. In fact, it was claimed, Canadian plants had lost business to American plants of the same firm in some cases.

Several representatives felt that large U.S. shippers gained a further advantage, not available to similar sized Canadian shippers, from confidential contracts. That is, railways were seemingly more likely to make concessions to large shippers if smaller shippers couldn't wrest similar concessions on a "me too" basis; if rates weren't published, smaller shippers couldn't demand them.

It was also remarked that, regardless of firm size, the benefit of putting resources into thorough preparation for rate negotiation immediately went to other companies when rates were published. It was felt that this was to some degree inequitable to companies willing to invest in this effort.

A representative noted that multi-product companies such as his might use the same material in a number of applications. In that sense, a transportation rate that would make sales possible would be limited by different sorts of market competition in each case. End-market competition was a recognized factor in rate setting and it was therefore reasonable that different rates might apply on similar movements of the same material. Companies who were not competing in those end-markets should not be able to claim rates designed to penetrate that market, but presently could as rates are published. Hence, a railway might be reluctant to make published rate concessions and thereby foreclose the possibility of moving at least some product to the benefit of railway and shipper.

Representatives were not fully agreed, however, that allowing Canadian railways to engage in confidential contracts was the best course to put Canadian shippers on an equal footing with American shippers. All agreed that greater competition between railways was desirable and all tended to support increases in the interswitching limits prescribed in the CTC's General Order T-12. Publication of at least some rates was generally supported as these would establish "upper-bound" limits for particular movements.

At least one representative was reluctant to endorse permitting any confidential contract rates in Canada at all. Such permission could work to the disadvantage of smaller shippers in both domestic and international markets and in a great variety of industries, he suggested. The current policy of publishing rates generally worked well and should not be too quickly cast aside, since the disadvantages felt by some shippers in not being able to contract confidential rates on the Canadian portion of international moves were not all that great. The government should ensure that, in general the remedy did not create more problems than what it was intended to cure before proceeding with drastic remedies.

He added that the National Transportation Act had allowed shippers and railways great flexibility in negotiations and that this was reflected in published rates. It was not the case that "me-too-ism" led to the same rate applying for all shippers. In fact, a range of rates could be found in published tariffs for the same product moving similar distances of from 100 to 250 dollars per unit.

A representative suggested that a form of confidential rate could effectively, if temporarily, be generated in Canada, in that rate could be published in Limited Freight Tariffs (LFT's) which often would not be seen by other firms until incorporated into tariff items some months later. However, he felt that true confidential contract rates should be introduced in Canada as U.S. producers had certain cost advantages as a result of climate, etc., and should not be put at a further advantage unnecessarily.

Representatives were not certain of the long-run importance of secret rebates allowed by Staggers. However, they felt that the injunction against this practice in Canadian law was intended to apply only to railways. Certainly, as one person expressed it, shipping companies in Canada would not risk a serious disadvantage in trade by not engaging in rebate contracts with American railways simply to avoid doing what might not be illegal in any case. There was general agreement that participation in secret rebate contracts with U.S. railways was common among Canadian shippers.

Insofar as participation in such rebate contracts or other practices such as publication of proportional rates might tend to break down joint international through rates, there was little apparent concern that this might be undesirable. Shippers were more concerned with the level of rates and the responsiveness of railways in supplying those rates and services than the type of rate offered. One representative remarked that even joint rates were, in a sense, compound rates as they were made up of the different divisions accruing to each railway participating in the haul.

Some concern was expressed over route cancellations in the U.S. resulting from Staggers. Some minor efficiency problems had resulted and costs had increased slightly to some markets, remarked one representative. Another representative expressed concern over cancellation of reciprocal switching in certain cases by some U.S. railways. There was general ageement, however, that these problems were soluble through negotiations.

Much was made of the fact that Staggers had facilitated negotiation between railways and shippers and that this was highly beneficial to Canadian shippers. Representatives noted that the beneficial effects of Staggers extended to negotiations with Canadian railways who, said one representative, were "finally showing some willingness to compete on rates".

In general, representatives present at the meeting were very favourable to changes resulting from Staggers and felt that a similar climate of intra-modal competition should be encouraged in Canada. They noted that this inquiry, a further CTC inquiry on interswitching rights and limits and a Transport Canada study on collective rate-making between railways were going on simultaneously, and all were in some sense concerned with intra-modal competition. One representative remarked that the time seemed perfect for changes in Canadian legislation to encourage such competition.

4.5 Canadian Fertilizer Institute

The Canadian Fertilizer Institute (CFI) is the national not for profit organization representing the fertilizer industry in Canada. The CFI's 70 members include all Canadian producers of basic fertilizer products: nitrogen, phosphate, and potash. Collectively, Canadian fertilizer producers shipped over 3 million tonnes of product domestically, and exported close to 10 million tonnes during the most recent fertilizer year, July to June.

The CFI submitted only that members of the CFI's Traffic Committee had concluded, after some discussion, that to date the impact of the American legislation has not been detrimental to the industry. Indeed, some of the members claimed to have accrued some benefit from the Act.

The members also agreed that the legislation is still relatively new and to some extent, untested. Consequently, they are concerned that the full impact of the Act is as yet unknown.

4.6 Canadian Fruit Wholesalers Association

Association membership includes both shippers and receivers of fruits and vegetables. As most traffic originating in Canada moves by truck, however, it is essentially as receivers that members may be affected by U.S. rail deregulation.

Experience with U.S. rail deregulation has so far been mixed, with occurrence of some positive rate effects and some negative service effects, the latter particularly in the areas of damage claims and routing provisions. There have been some negative rate effects, however, on "overhead" traffic and traffic to destinations in Quebec and eastward.

Fresh fruits and vegetables as a class were freed from regulation in May, 1979, slightly in anticipation of passage of the Staggers Rail Act of 1980, but in the spirit of what was to be Section 10505 of the ICC act as revised by Staggers. Prior to this deregulation, traffic had increasingly moved to truck from rail as a transportation mode. This was mainly because cumbersome regulatory procedures governing rates made it impossible for railways to respond in a timely way to demands of the very volatile fresh fruit and vegetable trade. On deregulation, however, railways had become sufficiently competitive that rail experienced an increase of about 600 carloads/year in traffic from California to Ontario alone. There was then a benefit both to the fruit and vegetable wholesalers due to relatively lower transport costs and to the Canadian railways in obtaining revenue from additional traffic.

According to CFWA officials, however, rates predicated on certain gateways for destinations in the Maritimes and Quebec have been eliminated recently as a result of deregulation in the U.S. These are gateways which would carry overhead traffic, or traffic which moved from the U.S. into Canada before re-entering the U.S. in the course of shipment. As a result, rail rates through Canada to some eastern points are now well above rates resulting from a combined truck-rail rate where the rail portion takes place entirely in the U.S. It was not clear from CFWA submissions whether the total rate had come down on the combined move as a result of U.S. rail deregulation. Nor was it clear which provisions of Staggers resulted in the loss of rates predicated on the subject gateways.

Service difficulties have also resulted from rail deregulation, according to CFWA officials. These have been especially acute in terms of claims for loss and damage, but also include delays in transit times, route restrictions and billing difficulties. These are problems which relate mainly to behaviour of American rather than Canadian railways, however.

Canadian rail rates have been set on a proportional rather than joint basis in this trade since the 1960's, apparently because of dissatisfaction by the Canadian railways over their then division of rates. Deregulation has not, therefore, caused a break in a practice of making joint through rates. Deregulation has, however, eliminated the requirement for bills of lading in the United States, although these are still required in Canada. CFWA members have solved this problem on a temporary basis by matching up loads and lading bills at the Canadian border. They have also applied to the CTC, however, for changes in General Order T-6 which prescribes the use of the Uniform Bill of Lading.

Of more immediate concern, Canadian railways have refused in general to process loss and damage claims on behalf of American carriers, thereby requiring such claims to be made direct to the originating carrier and to be litigated, if necessary, in the state where shipment originated. The refusal to process claims is seemingly based on two factors: lack of bills of lading for the American portion of the haul; and exclusion of Canadian carriers from liability limitations arranged by American carriers under U.S. law.

The limited liability accepted by U.S. carriers is a major irritant to CFWA members and this issue was extensively addressed in a submission made to the U.S. Congress by the United Fresh Fruit and Vegetable Association, with which CFWA is affiliated. U.S. law (49 USC s 10730) introduced by Staggers permits U.S. carriers to limit their liability without obtaining regulatory approval. If contracts are made for rail transportation, they may also contain provisions for limiting liability which remain confidential between the shipper and the originating carrier. Currently, say CFWA officials, it costs more than it is worth to obtain even such damages as are allowable by sueing in courts in origin states.

CFWA would support allowing Canadian railways to join in confidential contracts and liability limitations provided it would expedite claims processing. CFWA acknowledges, however, that allowing Canadian railways to participate in confidential contracts could conflict with Canadian law requiring publication of tariffs. CFWA has made no thorough study of effects that could result from changes in the Canadian law to eliminate or restrict such rate publication.

Rebates offered by American lines have resulted in routing changes and scheduling difficulties in some cases. Rebates offered apply on the

American portion of routes only, to CFWA's belief, and are not in conflict with Canadian law in their view. These routing changes can result in delays of up to 72 hours, which may be very important in fluctuating perishables markets.

As well, route closings and restrictions practiced by some American lines may alter marketing practices. For instance, it had been a practice of some shippers to consign loaded cars to northern destinations without committed receivers. These "rollers" could then be diverted to specified different destinations as buyers were found. Route closings and restrictions practiced by American railways could now make such diversion prohibitively expensive or impossible. Some price rises could result from having to abandon this marketing practice.

Route closings, possible changes in interswitching rates, and rules and contract negotiations possibly involving numbers of carriers and varying rebate levels have, in general, made traffic decisions more difficult and uncertain and could also have effects on equipment availability and the cost of that equipment when available, according to CFWA. The full effects of changes permitted by Staggers cannot be fully evaluated as yet, however, as the practical meaning of the law is still being worked out.

4.7 Canadian Industrial Traffic League

Canadian Industrial Traffic League officials are of the opinion that, concerning U.S. rail deregulation, grievances are emanating mainly from the Canadian carriers whereas Canadian shippers are perceiving new opportunities particularly in rebate contracts and in general Canadian shippers are taking advantage of the opportunities offered by the Staggers Act. However, the Canadian shipper is entertaining fears about boxcar deregulation because it represents a radical departure from the established order and the consequences are unknown. Whereas, U.S. railways are offering rebates to Canadian shippers in return for the long rail haul, Canadian railways are cancelling routings in order to protect their long haul. By doing so the latter are depriving Canadian shippers of their rebate opportunities.

The CITL officials do not believe that the majority of their members wish to see confidential contracts adopted in Canada. However, they did remark that the loading allowances currently being granted to Canadian shippers by Canadian railways are tantamount to secret rebates. The shippers do not want their competitors to know that they are receiving the loading allowance because it gives them a competitive advantage.

The CITL officials remarked that there are many good aspects of Staggers and many poor ones. In any case, the gap between the Canadian and U.S. systems has to be bridged in some manner, it was said. The adoption of proportional rates in Canada on international traffic would not solve all the problems. Canadian producers would still be at a disadvantage vis-à-vis U.S. producers selling their product into Canada. One suggestion was that the Canadian government could lobby to obtain exemption from selected sections of Staggers.

The CITL officials suggested that it is probable that when U.S. rail mergers reduce the U.S. rail system to about 6 railways, the great majority of U.S. shippers will request re-regulation because they will find that they are in the hands of a monopoly (oligopoly) and suffering thereby. This would impact on Canadian shippers also as rail rates increased all along the border and beyond.

A major point raised at this meeting was that support for Staggers-style confidentiality in contracts would tend to originate from large shippers and be opposed by small shippers. Under the current Canadian system of published rates, the latter would be perceived by many large shippers as riding on their coat-tails through knowledge gained from tariff publication. Large shippers in Canada, to some extent, appear to be fully in favour of the abolition of, at least, certain kinds of traditional rate relationships.

The following additional questions were raised:

How can we deregulate further in Canada and not run the risk that they may possibly re-regulate in the U.S.?

Can the CTC keep its eyes closed while the pressure builds up either on the shipper or the carrier side, or both? Can we wait for re-regulation to occur?

The response to these questions was along these lines:

It has been said by a respected traffic manager of a large Canadian steel company that Canada should wait until U.S. deregulation has been in effect for 5 years before making any drastic changes to its current regulations. However, CITL officials suggested that the allegations concerning CAST may be the tip of the iceberg. If the media learns of further rebate allegations, it may become a shrill issue amongst shippers and the CTC may be forced to take action, the officials suggested. Shippers are beginning to complain about "unpublished rates" by Canadian railways it was said. For example, a Canadian railway is publishing an official rate but neglecting to mention the loading allowance which is, in effect, a rebate.

Currently, some CITL members are for U.S. style deregulation in Canada while others were pro-deregulation and reversed their stance when they saw their alternative routings cancelled.

In summary, the CITL officials agreed, unless shipper complaints increase substantially, the CTC could simply close its eyes to what is occurring in contravention of the Railway Act (S. 380, S. 275) until it is ultimately known what the longer-term effects of the Staggers Rail Act are going to be, especially those which may impinge on Canadian institutions.

4.8 Canadian Manufacturers Association

The Canadian Manufacturers Association sent a telex submission to Inquiry officers in late January, 1984, which supported allowance in Canada of confidential contracts and rebates and amendment of Section 279 of the

Railway Act to make it mandatory for railways to price international traffic independently. Inquiry officers had earlier met with members of the CMA and remarks in this sub-chapter are based mainly on that meeting.

Members of the Canadian Manufacturers Association had diverse impressions of the effects of U.S. rail deregulation; some found benefits deriving from it while others felt disadvantages. A major point raised was that captivity to one railroad is a major factor as to whether or not those present supported or did not support the proposition that U.S. rail deregulation has had a beneficial effect on their operations.

One representative claimed that his company has derived major benefits from the fact that CN and CP are not discussing international rates for fear of U.S. antitrust problems. The result is that they are now competing for his company's traffic.

Another member cited a U.S. confidential rebate which was permitting a shipment from Chicago to Montreal to defeat his company's shipment from Windsor to Montreal. Not surprisingly, his company is distressed about this situation.

On the same subject, a representative of another company remarked that contracts are ostensibly confidential but people are prone to talk so that he has found that confidentiality is moot.

A representative of a resource commodity producer reported that his company was being hurt by their long-haul on the Canadian side of the international border before they reach the lower U.S. rates. They approached a U.S. railroad and obtained a lower rate in return for giving the U.S. road the long-haul.

A traffic manager from a Canadian steel company declared that the Staggers effects have been beneficial to them. He stated that we would only hear the complaints. The shippers who are benefitting will not speak up for fear of losing the benefits they are deriving. He believes that Canada should adopt confidential contracts for international railway traffic. It was his opinion that all U.S. railways have adopted ConRail's aggressive approach to traffic. He also remarked that the initial posture of the Canadian railways was to try to convince Canadian shippers that the Staggers Act was fraught with illegal possibilities as far as Canadian shippers are concerned.

Another member remarked that one of the illogical aspects of boxcar deregulation is that the shipper using the more expensive cushion underframe car shoud be able to afford a higher rail rate than the shipper using the plain boxcar.

One problem voiced by a member, is knowing whether a Canadian shipper is legally permitted to participate in U.S. rebates. A U.S. subsidiary of CN, the G.T.W., post-marked a rebate offer "Montreal". In many cases, the U.S. subsidiary of the Canadian road is providing the rebate it was said. Perhaps the most important issue that was repeatedly voiced was that some pronouncement should be made as to what would or would not be ruled illegal in Canada in the matter of entering into contracts with U.S. railways. People in industry are concerned about the legality of actions which they feel obliged to take for commercial reasons. They do not like feeling in legal limbo. The question then arises as to whether the government and CTC are perceived as dodging their responsibilities.

4.9 Canadian Pulp and Paper Association

Inquiry officers met with members of the Association and later received a written submission.

CPPA members are manufacturers and distributors of forest products such as wood pulp and newsprint and are primarily located in remote locations across Canada. They have extensive capital investments in their facilities. In the vast majority of cases, they are captive to one rail carrier at origin.

Members rely heavily on the U.S. market for the sale of their forest products and compete in that market with manufacturers of forest products located within the United States and abroad.

According to CPPA's submission, the establishment and maintenance of historical rate relationships, the existence of international joint through rates, and the filing and publication of such rates have been and continue to be essential to members' continued competitive access to U.S. markets.

CPPA submitted that existing Canadian freight rate legislation affords the industry a significant safeguard against the dominant power of the Canadian railways. Section 23 of the National Transportation Act provides a necessary avenue of appeal when Canadian railways, to which it is captive, take rate action which the industry believes is prejudicial to its access to the U.S. market. The industry relies upon those legislative provisions as minimum safeguards. The removal of those safeguards would place it at the mercy of the originating Canadian carriers according to CPPA's submission.

They further stated that the industry relies upon the pronouncements of the Canadian Transport Commission that international joint through rates are in the public interest of Canada and is extremely concerned that any shift to the establishment of proportional rates to the Canadian/U.S. border would seriously jeopardize its competitive position in the vital U.S. marketplace.

According to the CPPA, it is not correct to say that U.S. rail deregulation has rendered international joint through rates irrelevant. The international joint through rate structure for wood pulp and newsprint continues to exist and is the basic rate structure under which this international traffic moves.

Rebate contracts have been offered to Canadian shippers by U.S. railroads but the Association submits that CPPA members are unaware of the extent to which they have been implemented. The industry believes that granting of rebate contracts is a short-term manifestation that will soon come to an end. Contracts involving rate rebates are offered primarily by "bridge" or intermediate carriers endeavouring to increase their market share, according to CPPA. Some of these carriers are in financial difficulty and members believe these carriers will not likely be able to offer rebates over the longer term.

While boxcar deregulation will likely have an impact on the international joint through rate structure, CPPA submitted that it is too early to determine what the nature or extent of such impact will be. CPPA members expected to be provided with ample lead-time before any changes are effected, and that it will likely be a period of some years before major changes of a permanent nature are effected. CPPA recommends that this matter be reassessed in the future, therefore.

Association members strongly endorsed the continuation of the availability of alternative routings and deplored any efforts which may be taken by either Canadian or U.S. railroads to close routings. Access to competitive routings was stated to be fundamental to the industry's continued viability and to its ability to ensure that its products move to U.S. markets efficiently and economically.

CPPA has, for several years, advocated the establishment of an international commission which would monitor and regulate international joint through rates between Canada and the United States. It has urged the establishment of ongoing consultation between Canadian and U.S. regulatory agencies.

The Association strongly urged the establishment of an ongoing dialogue and consultation between Canadian and U.S. officials with respect to international rail movements. This dialogue would encompass the effect of the U.S. rail deregulation on Canadian railways and shippers and would hopefully bring about a greater awareness of the goals and aspirations of both countries. Above all, CPPA submitted, it could establish a milieu in which changes taking place in the United States would be implemented with minimum disruption to Canadian railways and Canadian shippers.

Both at the meeting and in written communications, CPPA emphasized the dangers of over-reacting in the short-term to perceived changes in the United States and to their impact on the Canadian transportation system. Changes which take place will be gradual, they said. No perceived effects could, at this time, justify any recommendation for the alteration or dismantling of the international joint through rate structure which is essential to the maintenance of industry competitive relationships in the U.S. marketplace. CPPA suggested that the Commission should continue to monitor the situation.

4.10 Canadian Superior Oil Co. Ltd.

This company made a submission by telex. They stated that Section 380 of the Canadian Railway Act should be repealed to allow Canadian shippers to receive rebates which are being offered by U.S. rail carriers.

As Canadian shippers may not participate in these rebates, they said, Canada's export position is being threatened. Canadian Superior has not entered into any contract with U.S. rail carriers offering rebates, but many of their U.S. customers have. According to Canadian Superior, these rebate contracts specify the route which must be used and a volume or percentage of traffic to be transported via that route. The Canadian shipper controlled the route of a shipment before rebates but the U.S. customer now controls the route to be able to collect those rebates which are available. The U.S. customer does not reveal the amount of rebate he is paid. This weakens the control of a Canadian exporter over his goods, stated the company.

The payment of rebates to the U.S. customer by a U.S. railway places the Canadian manufacturer in a situation where the delivered price of product is unknown, according to Canadian Superior. In any industry it is important to be aware of the delivered price of product in order to compete with product available in the United States, they said. Unless the Canadian manufacturer/shipper is allowed to accept the rebates that are being paid, the Canadian economy stands to suffer, as product pricing becomes more uncertain and markets are lost.

Canadian Superior also commented on Route Cancellations by U.S. Carriers.

Canadian carriers are also guilty, the company submitted, of cancelling traditional routes. On July 20, 1982 CN Rail cancelled the route from western Canada for sulphur shipments via the Emerson gateway. This action, said Canadian Superior, forces Canadian sulphur shippers to use the longer Canadian route via Ft. Frances, Ontario. The CN contention as telexed to the CTC on July 19, 1982, was "If the Canadian carriers are prevented by the CTC from taking measures to protect their long haul routings, the result will be to relegate very quickly the role of the Canadian railways to that of short feeder lines in the best interests of the U.S. rail network to the financial detriment of the Canadian railways". It is obvious, according to Canadian Superior, that the U.S. rail carriers think exactly along the same lines as the Canadian carriers.

A Canadian shipper should be entitled to the most economically efficient route to move his products to market, submitted the company. They went on to state that: The Canadian railways' right to protect their long hauls should not penalize Canadian export trade; and the Canadian railways should be prepared to work with the shippers to develop and expand traffic rather than squabble over existing traffic. Canadian Superior supports the restoration of all routes cancelled by either Canadian or U.S. carriers.

4.11 Canadian Trucking Association (A.K. Maclaren, Executive Director)

Mr. A.K. Maclaren related that in order to extricate Canadian truckers from the moratorium which was imposed by the U.S. in 1981, the Canadians signed a five-point agreement in 1982. This agreement provides for guidelines and an international consultative mechanism. The consist of the consultative mechanism includes the following representation: the I.C.C., the Canadian Conference of Motor Transport Administrators (CCMTA), Federal Departments concerned with transportation, foreign affairs, trade and other interested agencies. The five-point agreement being new and the consultative process being still in its infancy, it is possible that it could rather quickly evolve into almost the only control procedure for dealing with international highway transport licensing. For that matter, Mr. Maclaren observed, there is a distinct possibility that the regulatory mechanism on the Canadian side will substantially disappear. This might occur because the Council of Ministers agreed at a meeting on December 5, 1983, to instruct the CCMTA Committee to act with dispatch in making recommendations designed to achieve uniformity in interprovincial highway carrier regulatory reform. Whatever reforms are recommended and subsequently adopted by the federal and provincial governments related to interprovincial trucking would have to apply to international trucking. Otherwise, Canada would be vulnerable to charges of discrimination.

Mr. Maclaren submitted that if total deregulation of highway transport comes into being, the five-point agreement could take on new significance because the Americans would have to substitute some control system for dealing with international transport, if not specifically because of Canada, then because of the Mexican situation. The latter situation is that caused by lack of reciprocation on the part of Mexico. This lack of reciprocation is exemplified by Mexico's denial of access of foreign passenger buses and the transfer of passengers to Mexican buses at the border. Mr. Maclaren feels that a new U.S. system for dealing with international trucking administratively is likely to take the form of some kind of bilateral trade-off mechanism. He believes that such a mechanism could be encompassed by the five-point agreement and that it would presumably override the residual regulatory mechanisms still in place on the Canadian side.

About 2/3 of the international truck traffic crossing the border is doing so along the Niagara frontier. By far the major portion of that traffic is interline, with the interlining occurring on the U.S. side of the border. Up until now, with particular reference to Central Canada, there has been a tendency for U.S. parents to interline with Canadian subsidiaries and vice versa, Mr. Maclaren remarked. The rationale for this tendency has been manifold including union jurisdiction. However, the prime reason has been the lack of reciprocity between provinces and the states. There has also been the matter of the difference in sizes and weights including the 102" wide Canadian vehicles compared to the 96" wide vehicles the Americans operated until recently.

Mr. Maclaren related that since some of the large U.S. carriers gained entry into Canadian markets using brokers, the marketing advantages of using single line authority (and even ceasing to interline with their own subsidiaries) is becoming more prevalent.

In a short time span, most of these operating constraints have disappeared although the U.S. state tax jungle remains a problem for Canadian truckers, Mr. Maclaren stated.

Some executives of the Canadian trucking industry foresee that, with an open border and the prospect of only nominal customs tariffs, the large U.S. carriers possessing Canadian operations can use their access to Canadian markets, at various points, as an enhanced marketing tool in soliciting freight destined for the Canadian market via U.S. routes as part of their existing national network. The Canadian freight would then provide a convenient "spoke" operation which would complement (and is already doing so in some cases) the existing U.S. network.

Mr. Maclaren submits that what is happening in the U.S. as a result of de facto deregulation (which far exceeds the Congressional mandate as found in the Motor Carrier Act of 1980) is that the U.S. trucking industry has gone in two directions. On the one hand, there has been a huge increase in the number of new entries in the truckload sector. The resultant overcapacity has caused depressed rates and bankrupt carriers. However, some of the large U.S. general freight carriers have established brokerage operations on the side which, to some extent, complement their LTL operations.

On the other hand, almost the exact opposite has happened with respect to LTL carriers. Following deregulation, the ten largest LTL truckers in the U.S.A. increased their market share by about 40% and survived the recession in a profitable position.

Mr. Maclaren advises that one of the principal concerns of Canadian truckers is that if Consolidated Freightways' major reason for acquiring Maislin's authority was to obtain access to Montreal and Toronto from the entire U.S.A., the Montreal-Toronto leg (which they also acquired) could become a convenient staging leg to position equipment for the return trip to the U.S. If this concern proves to be justified, Consolidated Freightways could operate the Montreal-Toronto leg on an entirely different cost basis than could any Canadian trucker whose livelihood is founded on the Montreal-Toronto corridor. Mr. Maclaren adds that, as far as the West is concerned, although Consolidated Freightways does not have the reputation for being a cut-rate operation, they can, and will, price any route so as to achieve the best system advantage. In the foregoing respect, Mr. Maclaren added, that is what continent-spanning trucking operations are all about.

In order to stay in business in the U.S., and in order to have any hope of retaining market share, the Canadian carriers who compete internationally have had to slash their rates, Mr. Maclaren stated.

Were complete or substantial Canadian deregulation to occur, our long-haul domestic truckers could be in serious difficulty given the mixed nature of the Canadian market. With most manufacturing located in Ontario and Quebec, the traditional pattern for truckers has been to haul general freight (mostly LTL) out of central Canada to the Maritime provinces and to the West. The back-haul has been truckload quantities — particularly perishables. If, as a result of deregulation in Canada, the same pattern emerged as in the U.S. where TL and LTL are split, the viability of long-haul trucking in Canada could be placed in jeopardy.

Concomitant developments are leading to the rationalization of Canada's branch plant economy. We are witnessing the results of the Tokyo round of tariff reductions, and a general rationalization of industry in North America required to remain competitive in world markets. Concurrently, we are witnessing the development of highly efficient single-line trucking and rail/truck intermodalism between the U.S. and Canada. Mr. Maclaren submits that the transportation rationalization process is only one aspect of a phenomenon that could turn out to be the deciding factor, for many industries, and push Canada into a common market relationship.

A question which may soon be frequently asked in industry could be: Why do you need a branch plant in Canada when the customs tariff is minimal and (if) you can achieve even better and cheaper direct transportation service from more efficient U.S. production facilities?

Mr. Maclaren's final musings are well worth relating. He wonders whether, with most of the regulatory and operational road-blocks removed on international trucking (and perhaps soon even more so in rail rationalization), if under any circumstances we can hope for as efficient a transportation system as the U.S.A. simply because of the difference in geography, population distribution and economics of distribution in the two countries. He submits that history suggests that we have been able to keep an advantage by having at least as efficient a transportation system (as the U.S.A.) because through luck or good management we paid more attention to the economics of transportation as being the critical element. He asserts that the maintenance of an east-west transportation link has been about the most consistent economic policy that Canada has had over the years. He adds that this may no longer be enough and that the fact that the Americans have eradicated most of the self-imposed dis-economies from their transportation system, the natural U.S. advantages may simply overwhelm us finally. Consider their lower energy prices, their work force that is apparently less militant and more willing to roll with the punches, plus the fact that their trucking industry now has sizes and weights equal to ours and a much more efficient highway system and one cannot help but wonder, Mr. Maclaren said. However, Mr. Maclaren does not see this as a reason for giving up. He believes that we have no choice but to redouble our efforts to maximize the efficiency of the Canadian transportation system. Failure to do so really would turn Canadian regional markets into northern adjuncts of regional U.S. markets, he contends.

4.12 Canterra Energy Ltd.

The transportation manager of this company observed that, in relation to the Staggers Rail Act, he possessed two points of view, a sales point of view and a transportation point of view. From a sales point of view, the Staggers Act has enabled penetration of markets not heretofore reached. From a transportation point of view, the Staggers Act has caused his company to lose control of the routing in some situations. The consumer (consignee) now controls the routing if he has entered a confidential contract with U.S. carriers. In such a situation, if Canterra Energy Ltd. wishes to participate in the sale, they have no choice but to accept the routing.

Canterra personnel observed that the CN closure of the Emerson gateway was a serious blow to them. At the time, the Sulphur Traffic Committee, of which Canterra is a member, considered initiating a Section 23 (N.T.A.) application to appeal but were deterred by the prospect of high legal costs. They believe that there should be some provision for an applicant to recover costs associated with a Section 23 case.

Prior to the Emerson closure, Canterra could route via that gateway and thence have a choice of the Soo Line or Burlington Northern. In addition, they could use the Fort Frances gateway which provided them with a choice of four (4) U.S. intermediate carriers.

As part of their effort to operate economically, Canterra tries to get its tank cars into the U.S.A. over the shortest possible routing. They do so because mileage compensation paid to them in the U.S.A. is far higher than in Canada ($1.25/mile in the U.S. versus $0.50/mile in Canada. Both are approximate).

Mr. Regehr observed that inasmuch as liquid sulphur is being shipped from both CN and CP origins, he believes that the two railways should not be permitted to continue to negotiate rates collectively except for rates in which more than one railway is involved in the routing. However, the sulphur industry had always negotiated rates with the railways on an individual sulphur plant basis. Almost two years ago, the Sulphur Traffic Committee was initiated to establish a line of communication with the railways. The Emerson closure precipitated this action in 1982. Prior to the Staggers Act, Canterra was coufronted with only one variable in assessing their competition. That variable was the price of sulphur at their competitor's plant; Canterra was aware of the rail rates being paid by their competitors because these rates were published. Inasmuch as Canterra sells F.O.B. their sulphur plants, the major consumers (consignees) make their own transportation arrangements, including rate negotiations since U.S. rail deregulation.

Prior to Staggers, blanket rates prevailed from most Western origins and were published in tarifs such as C.F.A.W. 4236 to sulphur-consuming destinations in the U.S.A.

Because of U.S. rebate contracts, the aforementioned tariff can now only be considered a rough yardstick Canterra personnel averred. Generally speaking, ownership of product reverts to the consumer at the gate of the plant; however, Canterra is in a position to recommend routing to the consumer (consignee). Since deregulation, Canterra does not know the exact transportation costs. They depend largely on the customer's word as to whether the Canterra delivered price is competitive or not. They have no way of knowing whether or not the customer's assertion is, creditable. Since the enactment of U.S. rail deregulation legislation, even if prejudice did exist, Canterra would find it virtually impossible to make a Section 23 case due to lack of hard facts to support their application.

Canterra transportation personnel expressed concern for the small consumer who might lack the volume required for a confidential rebate contract.

One of the Canterra personnel remarked that the initial stages of deregulation have resulted in a more conciliatory attitude on the part of the Canadian railways due to competition from U.S. railways. However, the continued merging of U.S. railways, he believes, will probably result in higher freight rates on both sides of the border because of reduced competition (due to the reduced number of carrier options).

Currently, a consumer (consignee) may request shipment from a particular plant because it is served by CP Rail to the border at Portal in order to get the equipment onto the U.S. side of the border as soon as possible to enjoy the higher car mileage allowance. The same consumer may have entered a contract with an intermediate carrier.

Canterra personnel observed that it would be advantageous to the sulphur industry if it were possible for shippers to legally negotiate contracts. In this way they could regain the control that they have lost to the consumer (consignee).

Transportation of their product is a distinct profit centre for Canterra. Mileage allowance and detention (demurrage) provide the revenue to off-set the cost of owning a fleet of tank cars. The mileage allowance is derived from the railways.

4.13 Council of Forest Industries of B.C.

COFI members expressed diverse reactions to U.S. rail deregulation. This diversity is clearly related to their competitive positions in relation to their individual access to transportation alternatives.

Council members said that there has been a change in rate relationships since rail deregulation occurred. Up until then, most B.C. lumber was moving on TCFB (Trans Continental Freight Bureau) rates. After the Staggers Act, lower single line rates became available to lumber producers in the U.S. northwest whereas they are not generally available to B.C. lumber producers. This situation forced CP and CN to compromise by publishing (via the C.F.A.) what are referred to as Special Lumber Tariffs, the level of which is somewhere between single-line rates and TCFB rates. The Special Lumber Tariffs apply to destinations in Texas, Oklahoma, Arkansas, Louisiana and the U.S. Mid-west. CP and CN individually negotiated with their respective end-to-end direct connectors to establish these Special Lumber Tariffs. Although U.S. single-line rates are not confidential, the B.C. lumber industry is feeling their impact because they are being used by lumber producers in the U.S. Northwest and because they are lower than the Special Lumber Tariffs available to B.C. producers.

TCFB rates are still being used by CN and CP to destinations in the U.S. Southeast whereas the Northeast U.S. is primarily being served by Agreed Charges (on the Canadian leg) involving rail to distribution yards located at Eastern border points and to destinations within the Northeast U.S.

Some southern B.C. producers have access to Burlington Northern and enjoy single-line rates (and possibly U.S. rebates). On the other hand, B.C. lumber producers located remote from the border or remote from BN points in B.C. have to accept the Special Lumber Tariffs negotiated by CP and CN Rail since 1980. About 25% of their lumber market is located in Texas and Oklahoma. They are not aware of any circuitous routes being used to destinations in that market because of rebates. They do know that there are no longer as many routes open to Council members. The Staggers Act encouraged some railways to insist on routing via Chicago.

Eastern re-load centres were life-savers to Council members. Fortunately, the centres were established before U.S. rail deregulation and this extended their Northeast U.S. market.

The Council members do not like collective rate-making (Section 279) as applied to international rates. Some members stated that a more open dialogue with Canadian railways was much more important than any Government action that they could think of.

They assert that they are at a disadvantage regarding rates as to:

1) those they can see (published)
2) those they cannot see (confidential contract rates).

Some Northwest U.S. lumber is moving TOFC to Chicago and is subsequently being roaded from there to all points in the East. Some southern B.C. producers are trucking a relatively short distance to reach U.S. railways. However, the producer located in northern B.C. could not afford to truck to BN in order to put his trailer on the TOFC train. Inasmuch as TOFC rates are not published in the U.S., B.C. lumber producers do not know what TOFC transportation is costing their U.S. competition.

Council members feel that the U.S. railway mergers will worsen the members' situation because 1) it will lead to more route closures and 2) will produce more single-line rates which will be available to U.S. producers (shippers). A member remarked that the TCFB has become a publisher of nominal rates for Northwest U.S. shippers.

Members agreed that boxcar deregulation could lead to total deregulation of all forest products i.e., it could lead to flat car and bulkhead car deregulation as well as boxcar.

It was suggested that if one looks at the list of U.S. contracts involving Canadian lumber origins one can assume that rebates to shippers are involved in many cases.

4.14 The Coal Association of Canada

Commission inquiry officers sought a coal industry perspective and met with Mr. Richard T. Marshall, President, The Coal Association of Canada and Mr. Terrance L. Garvey, Director Transportation, Westar Mining Ltd.

The Coal Association representatives stated that they felt Staggers would have a minimal impact on their members as there were virtually no Canadian coal shipments made to the United States. Nor did they feel that traditional markets of Canadian coal shippers would likely be infringed or much affected as a result of Staggers because other factors were more important than the effects of changes in the U.S. rail system. The Coal Association members did, however, offer valuable insights into possible effects of Staggers on others, based on their long and intimate experience with railways.

In general, said the association representatives, Canadian coal mines were of relatively large output and dedicated to fulfilling long-term contracts, whereas it was more common in the U.S. for mines to be small and operate as "swing suppliers" in markets important to Canadian shippers. Because Canadian mines were long-term contract suppliers, they had engaged the Canadian railways in long-term contracts as well.

Over the last ten to fifteen years, and especially since about 1975, there had been a positive change in the willingness of the Canadian railways to talk with coal shippers and co-operate with their needs, according to the Coal Association. In part, this had come about because the railways had learned more about the coal business and because the coal shippers had learned more about the rail business. Mr. Garvey remarked that his company was probably CP Rail's biggest customer, that coal was generally a great rail revenue producer, and that this no doubt was a major reason for the railways' increased willingness to co-operate with coal shippers.

The Canadian railways have shown an increased sensitivity, for instance, to market conditions of coal producers during rate negotiations. Nonetheless, the onus is still very much on the shipper to be prepared and knowledgeable about the railway business to obtain the best possible rates and service. It was noted that various Japanese coal customers had, for example, decided that they would no longer negotiate directly with the railways as they lacked the expertise to ensure as good a result as some Canadian shippers.

Coal association representatives stated that a commodity-oriented marketing organisation such as that of CP Rail could be helpful to railway and shipper alike in that it increased the likelihood of the two parties being sufficiently knowledgeable about each other's business to make a deal suitable to both. Mr. Garvey, however, noted instances where lack of knowledge and negotiating skill had worked to the detriment of both shipper and carrier. Negotiations between carriers and shippers apparently will have increasing importance under current U.S. law, and the implication is clear that a greater knowledge burden will be placed on both shippers and railways to obtain results. No doubt shippers able to afford more sophisticated traffic departments and carriers able to afford personnel specializing in the requirements of individual commodities will be at some advantage in these changed conditions, other things remaining equal.

In general, the coal association members thought it likely that U.S. coal rates would climb under the pricing freedom allowed by Staggers. This could have some effect on eastern Canadian customers of U.S. mines by raising the delivered price of that coal. Differences in delivered cost of U.S. and Western Canadian coal to these markets were so great, however, that there would be little chance of the Western product becoming competitive in those markets as a result of higher U.S. coal rates. What Western coal is now sold in eastern markets is more a result of a desire by customers to ensure alternate sources of supply in emergencies than because the Western coal is price competitive.

No increased equipment problems were thought likely to result directly or indirectly from U.S. rail deregulation as the equipment in coal service was dedicated to that service and most commonly used in unit trains.

4.15 Dow Chemical Canada Inc.

Mr. James S. Handyside, Traffic Manager, submitted a written response to the Terms of Reference of the inquiry and we are reproducing his response below. Preceding each response, the related Term of Reference has been inserted, for reader convenience.

Term of Reference

a) Given that the maintenance of traditional rate relationships (such as parity) as they relate to joint international through rail freight rates have been found by the CTC to be in the Canadian public interest, has the Staggers Rail Act of 1980 had the effect of making any change in these relationships thus interfering with a condition that is favourable to Canadians and in the Canadian public interest? If so, a full explanation would be offered in the CTC's report to the Minister.

J.S. Handyside Response

(a) No doubt that at some time and place the Canadian Transport Commission has found "traditional rate relationships (such as parity) as they relate to joint international through rail freight rates" to be in the Canadian public interest.

However, it must be acknowledged that the preponderance of rail traffic within Canada moves without the benefit of regulatory influence on rates (traditional relationships, parity or anything else). The changes brought about by the Staggers Act remove regulatory influence to create an environment on international traffic somewhat closer to the Canadian experience. From this point of view it is inappropriate to call into question changes, which, for the most part, will work indiscriminately for and against the Canadian Public interest.

Term of Reference

b) Given that joint international through rates have existed for decades and are treated as legal rates by carriers and shippers in both Canada and the United States, what, if anything, in the Staggers Rail Act of 1980 operates to call the legality of such rates into question or to challenge the CTC's traditional jurisdiction over the Canadian portions of such rates?

J.S. Handyside Response

(b) The answer to this leading question is obviously the contract and confidentiality provisions.

Term of Reference

c) If so-called rebates are being paid by U.S. roads to Canadian shippers, is this a practice that violates any Canadian law? Even if it does not violate our laws, what practical effect does it have on:

(i) Canadian shippers;
(ii) Canadian railways?

If the effect is adverse to Canadian interests, what steps might be taken (legislatively or otherwise) to diminish the harm to our interests?

J.S. Handyside Response

(c) Probably.

(i) With respect to domestic markets Canadian shippers will have to take steps to protect themselves against whatever consequences rebating may have. Despite the "confidentiality", word gets around and alert shippers will continue to be able to evaluate competitive situations.

With respect to U.S. markets, Canadian shippers have no alternative but to play the game. The most prudent will do so in ways that do not contravene Canadian law and regulation.

(ii) No comment. Presumably the railways will cover this adequately.

It needs to be recognised if there are effects adverse to Canadian interests, there are also effects favourable. It would be unwise (and perhaps ineffective) to attempt legislative or regulatory steps to eliminate just the adverse.

Term of Reference

d) What are the effects on Canadian shippers and railways of cancellation by U.S. roads of certain routes, thereby affecting length-of-haul and possibly causing Canadian shippers to have to use U.S. roads for greater portions of the haul, thus depriving Canadian roads of their traditional divisions?

J.S. Handyside Response

(d) Here, too, the Canadian railroads will provide the most descriptive comment. However, it should be noted that the Canadian lines are not without resources. See C.F.A. Tariff 3300 CTC(F) 961, items 400, 480, 520 and many, many more where the Canadian lines have established proportional rates from the more westerly border crossings restricted to traffic routed via the more easterly crossing to give them a longer haul. Both the CN and CP have a long history of competing effectively with U.S. lines not only on international traffic but on offshore export and even on traffic between U.S. points. They will continue to do so without benefit of legislation or regulation.

4.16 Indusmin Ltd.

Indusmin Limited officials had contacted the Commission prior to initiation of this inquiry to express their concern at certain effects of Staggers.

Indusmin officials noted that freight charges were a very important part of the delivered cost of their product, silica sand used in glass-making. Indusmin's production costs were high compared to much of the industry, as they obtained the sand by crushing mined hard rock, while American suppliers, for instance, had access to sand in a granular form, free of impurities. Despite higher production costs, however, Indusmin had a price advantage over American competitors in its major Canadian markets because Indusmin's transportation costs were relatively low and transportation costs were such a dominant factor in delivered costs. These factors had been extensively studied in 1969 when the decision was made to begin production in Ontario.

Since U.S. rail deregulation, however, Indusmin had experienced severe price competition from American rivals. This price competition essentially resulted from a reduction in transportation costs available to rival companies. According to Indusmin officials, U.S. transportation costs had been reduced by two mechanisms: lowering of published tariff rates, and inclusion in contracts of secret rebates.

Indusmin officials were most concerned by the ability of American firms to make contracts with secret rebate provisions on traffic to be moved into Canada by rail.

Firstly, Indusmin officials felt that payment of such rebates might be illegal under Canadian law, by provisions of the Railway Act, Section 380 in particular. Secondly, even if such rebates were not illegal *per se*, they might have the effect of lowering rates below minimum compensatory levels. Application of rates below minimum compensatory levels on rail traffic is illegal both in the United States and in Canada. As even the existence of rebates, let alone the amount of such rebates, was not required to be published in Canada, so Indusmin believed, prosecution for application of rates below compensatory levels could not be undertaken with much hope of success. In any case, redress would likely come long after the event, by which time irrevocable damage might have been suffered by Indusmin.

To illustrate the damage which could result from secret rebating, Indusmin noted that about 25% of their Ontario production is purchased by one customer, who has been approached by an American supplier able to negotiate confidential rates for rail transportation. If that supplier could negotiate a firm contract with Indusmin's customer, a volume-related rate would apply on rail transportation, and in addition, a rebate provision would further lower the effective rate paid. Loss of 25% of their business could make Indusmin's operation as a whole uneconomic, however. The plant could consequently be closed with a loss of Canadian jobs and industry.

Indusmin indicated that they had had a cost advantage of from two to ten dollars at various times over their American rivals, but that this had currently shrunk to nil, and any further price reductions would threaten the operation's profitability. A similar situation was developing with respect to the company's Quebec production, said the company.

Officials admitted, however, that they had not, in the past, signed long-term contracts with the customer in question and offered no reasons to believe that their American rival would be likely to sign such contracts where Indusmin had not. As well, it was not entirely clear that any reduction in profitability of Indusmin could not equally be ascribed to other causes, such as the recession. According to an Interim Report of Falconbridge Limited, that company's earnings contribution from Indusmin Limited was $1,282,000 for the 6 month period ended June 30, 1983 but only $105,000 for the similar period in 1982. (Indusmin is about 70% owned by Falconbridge according to a Financial Post survey of November 1982).

Indusmin officials stated that they believed American railways were attempting to maintain volumes of traffic without regard to costs, and that this could lead them to negotiate rates which were non-compensatory. Even in the United States, however, where contract rates were required to be filed with the ICC, it would be almost impossible to obtain the rate via the ICC as rights of discovery, as practiced, seem to depend on having already proved the rate to be illegal.

Indusmin officials felt that traffic ought not to move into Canada by rail unless the true effective rate for the total movement was published in Canada, and this rate could be determined to be compensatory. Further, they felt that the intention to move traffic into Canada at rates which were not published should, in itself, be illegal. Further, the CTC should be empowered to search for and demand copies of contracts or other documents indicating such intentions, as the Combines Investigation Branch had power to search for and demand documents in Anti-Combines cases. Indusmin felt that they would have no difficulty competing with other companies provided that rates were known and compensatory.

Indusmin itself ships its products by truck, as rates offered them by CN have not been sufficiently low, said officials.

4.17 Mining Association of Canada

On October 21, 1983, The Mining Association of Canada wrote to the Minister on the subject of changes to interswitching regulations.

Given the vital role which rail transportation plays in the mining industry, the industry is anxious to be in a position to use both major Canadian railways as a single distribution entity. The Association believes that this could be achieved were the current four-mile interswitching limit extended, at least to the industrialized limits of our urban centres, to better reflect the expansion of the major industrial core which has occurred since World War II.

As to international trade, the Association believes that "by providing shippers with the ability to use railways as a single distribution system, more equity will undoubtedly be available to all concerned, thus contributing to the continuing competitiveness of our export trade".

This proposal may be construed as a suggested advantage to partially counter any disadvantages which Canadian shippers are experiencing due to U.S. rail deregulation.

4.18 PCS Sales Ltd. - A Subsidiary of the Potash Corporation of Saskatchewan

The Potash Corporation of Saskatchewan is one of Canada's biggest shippers of potash to the United States. Mr. Andrew Elliott, Planning Manager of the corporation's sales subsidiary was contacted by inquiry officers.

Mr. Elliott stated that the Staggers Act had provided both benefits and disadvantages — but that Canadian shippers had received almost all the benefits and Canadian railways had been served with almost all the disadvantages.

The main benefits experienced by shippers were two: lower rates obtained through contracts and a more market-oriented, aggressive attitude on the part of American railways. Mr. Elliott remarked that this changed pro-shipper attitude was not noticeable in Canadian railways. He also noted that it was to some extent problematic whether these benefits were properly attributable to Staggers or to the current excess capacity of American railways brought on by the recession. Several more years of experience would be needed to settle that question.

Canadian railways, on the other hand, were experiencing difficulties because of the sudden differences between Canadian and U.S. laws. Institutional arrangements had previously evolved which allowed the railways in effect to ignore the existence of the international border. For instance, joint international through rates had been published in dollar amounts and a currency surcharge agreement existed between U.S. and Canadian carriers to reconcile payments made with differently valued dollars. Legal and institutional problems had resulted when American but not Canadian railways were freed by Staggers from publishing tariffs on certain kinds of traffic and were allowed to enter into confidential contracts with shippers.

Mr. Elliott saw two possible resolutions to the railway problem which might be compatible with the shipper interest. Either published rates could be maintained through using proportional rates to the U.S. border and abandoning the quest for a consistent system of published through rates, or confidential contract rates could be adopted in Canada. Mr. Elliott spoke in favour of the latter solution: in essence to "Take the words out of the Staggers Act and incorporate them into the Railway Act".

While there could be some problems resulting from such an action — e.g. it would probably mean that Section 279 of the Railway Act would have to be removed, with an end to collective railway pricing — Mr. Elliott was convinced that adoption of confidential contract rate legislation would facilitate U.S.-Canadian trade. This trade was vital to the potash industry in particular and to the national interest generally, and if impediments to such trade could be removed without great damage elsewhere, they should be, said Mr. Elliott.

PCS Sales' potash transportation has become dominated by unit-train type movements to warehouses in the U.S. for truck distribution to local customers, whereas previously, single car shipments to retailers had predominated. Nonetheless, the perceived low cost transportation system is that operated by International Minerals and Chemical Corporation; this system consists of a truck haul from the mine to the Canada/U.S. border where product is transferred to rail for delivery to customers by the Burlington Northern Railway.

The truck-rail routing had been established by I.M.C. in about 1968 and to some extent is made possible by Saskatchewan Government support for bulk trucking in very large trucks on provincial highways. A shipper system currently paid about 60% of the cost of additional maintenance required as a result of road wear by such heavy trucks, with the other 40% of additional costs supplied by the government.

New truck-trailer wheel alignments could soon result in trucks of 180,000 pounds (about 80 tonnes) travelling on Saskatchewan highways without need for additional maintenance. Thus, truck-to-Burlington Northern competition could increase for the present Canadian rail routing.

Nonetheless, there would not likely be significant modal shifts in potash traffic to the United States, said Mr. Elliott, due to the industry investment in rail cars made when railways had been unable to supply them in adequate numbers. There could be increased pressure on Canadian rail rates, however, or loss of the Canadian long-haul routing in future, though the Canadian railways currently retained that routing. This economic pressure was also partly a result of low equipment rates paid by the Canadian lines compared to those offered by U.S. railways.

Mr. Elliott supported adoption of confidential contract rates if necessary for both domestic and international traffic. Currently, he stated, there did not seem to be a legal problem for shippers entering into confidential rate contracts with U.S. railways as only railways were forbidden to enter into confidential rate contracts by Canadian law and Canadian law would not apply extraterritorially. Nor did Mr. Elliott believe that Section 380 of the Railway Act was a particular bar to engaging in confidential rebate contracts at present: if in fact such contracts were forbidden by the section, the maximum prescribed penalty amounted to no more than a $1,000 license fee, he suggested. As well, it would be difficult to discover, let alone prove, who might be involved in such contracts and it would not seem to be in the public interest to make the attempt.

Route closings allowed by Staggers had not yet been a problem for Canadian potash shippers, according to Mr. Elliott. Fertilizer manufacturers in the U.S. had expressed some concern on this issue, but Canadian shippers used only two or three rail links in general to reach destinations and had experienced no difficulty with route closings or circularity of routing resulting therefrom.

As to the suggestion that practices under the Staggers Act were affecting traditional rate relations in the potash industry, Mr. Elliott replied that traditional rate relationships were more affected by other factors. Nor were such changes necessarily detrimental. For instance, traditionally, rail rates to American destinations had been set to equal single car rates available from New Mexican shipment points. That relationship had now been destroyed by the use of solid-trains and warehouses — a concept pioneered in Canada -- although contract rates had also played a part.

Truck deregulation in the U.S. was also having local effects on the Saskatchewan potash industry which could be more important than rail deregulation, at least in the short run. Very low truck rates were currently available to U.S. destinations such as Nebraska, partly as these were backhaul moves and partly because of changes in the U.S. trucking industry caused by deregulation. Deregulation had caused trucking firms to expand in hope of reaping windfalls, but the recession had resulted in overcapacity in the industry. Partly because pension act provisions discouraged bankruptcies and partly due to the free-entry of owner operators who did not know their own costs, truck rates were now available which were as little as two-thirds of single-car rail rates in some cases.

Additionally, low ocean rates in combination with backhaul barge rates have made European potash producers competitive in some markets where Canadian suppliers had previously been dominant.

It would be difficult to attribute most transportation changes to Staggers given these fluctuating market factors, noted Mr. Elliott. Nonetheless, some concern was warranted by possible effects of Staggers in the longer run. For instance, if mergers continued in the U.S. and resulted in a system where there were only four or five railways in existence, as predicted by some, there could be profound effects. As well, great rises in railway profit could bring calls for re-regulation of the railway industry in the U.S. Such spectacular increases in profit were thought unlikely in the near future however, even though Mr. Elliott remarked that no firms in the Fortune 500 could be considered revenue adequate by current standards applied to U.S. railways.

Nor does the present U.S. legislation include effective shipper protection, as the market dominance criteria which would permit regulatory redress in the U.S. system is designed to protect the consignee, not the shipper, said Mr. Elliott.

Mr. Elliott did voice some support for a system of published proportional rates as an alternative to legislative change permitting confidential contract rates in Canada. This support was partly on the basis that if adequate changes could be achieved through proportional rates to give shippers advantages in the U.S. market which they could achieve through contract rates, and these advantages could be achieved without amending current laws, this would be a preferred solution. As well, publication of proportional rates would give shippers advantages in assessing whether to use all-rail or rail-barge transportation in certain situations, or to assign greater or lesser proportions of the haul-length to U.S. and Canadian railways.

4.19 Union Carbide Canada Limited

During a meeting on September 13, 1983, with the Canadian Manufacturers Association, the inquiry officers invited the CMA membership to make written submissions on the matter under investigation. The following are the comments of R.A. Lipsett, General Traffic Manager of Union Carbide of Canada on the subject:

Within the United States

Since the enactment of the Staggers Rail Act we have noticed a marked improvement in the performance of the U.S. railways in the following areas:

- Intra-modal competition (including price competition) has greatly increased. An example of this increased intra-modal competition can be seen in the enclosed copy of ICG Tariff 9112-B which provides for the payment to shippers of an allowance up to $425 per car (U.S. funds) if certain chemical shipments are routed via the ICG.

- The U.S. railways have become more responsive to the needs of shippers. For example, some railway-shipper confidential contracts contain railway service standards which provide for rewards and penalties. In addition these contracts also contain provisions for significant car allowances - in some cases up to $1,000 per car.

The following changes under the Staggers Rail Act have played a key role in improving the performance of the U.S. railways. First, as we have indicated, confidential contract rates encourage the railways to compete with each other rather than simply accepting a published rate as the standard for all railways. Second, by prohibiting collective pricing (except for joint rates) the Staggers Rail Act has fostered price competition which has led to the streamlining of railway operations, cost reductions, and aggressive marketing techniques, all of which have resulted in greater efficiency. Our experience indicates that the overall effects of the Staggers Rail Act on U.S. railway transportation have been beneficial. Two potentially anti-competitive interpretations of the provisions of Staggers have resulted in cancellation of certain reciprocal switching arrangements and certain joint routes, which could result in less intra-modal competition rather than more. However, we are optimistic that the U.S. Congress and/or I.C.C. will correct these two problem areas.

Within Canada

The Staggers Rail Act has had a negative effect on Canadian shippers and their dealings with Canadian railways because of the differences between current legislation governing collective pricing and rate publication in the two countries.

Unlike the U.S. railways operating under the Staggers Act, the Canadian railways under the Railway Act are:

- Permitted to price collectively.
- Required to publish their rates.

The allowance of collective pricing encourages both of Canada's major railways to avoid price competition. The requirement to publish rates also inhibits price competition by allowing the Canadian railways to ascertain each others rates. In addition, the rate publication requirement puts the Canadian railways at a competitive disadvantage with respect to U.S. railways who are allowed to establish confidential contract rates.

Both of these factors (collective pricing and mandatory rate publication) reduce the intra-modal competitiveness of the Canadian railways and place Canadian shippers at a competitive disadvantage with respect to U.S. shippers in both Canadian and U.S. markets.

Recommendations

In order to overcome the disadvantages faced by Canadian shippers and in order to make the Canadian railways more competitive and efficient for Canada as a whole, we recommend that the following legislative and regulatory changes be made:

(a) Allow confidential contract rates and rebates for railway moves which come under the jurisdiction of the CTC.

(b) Prohibit collective pricing by the railways with the exception of joint rates.

(c) Amend General Order T-12 so that:

- Interswitching limits are increased from 4 miles to 10 miles.
- Interswitching rates are equitable.
- The amended interswitching service, rates and absorptions are mandatory.

We trust that our recommendations will be looked on favourably by the Commission and that the Commission will take the necessary action to implement these changes.

4.20 WESTAC (Western Transportation Advisory Council)

At a symposium titled "U.S. Rail Deregulation - Problems and Opportunities for Shippers and Carriers" held May 9th and 10th, 1983, the president of WESTAC reminded the participants that Canada and the U.S.A. are each other's largest trading partner. He added that, accordingly, U.S. rail deregulation has direct implications for Canada.

In a letter dated August 8, 1983, to the CTC, the president of WESTAC, Mr. Martin L. Crilly, stated that a number of WESTAC members are concerned and directly affected by the changes in Canada-U.S. rail commerce brought about by the Staggers Act. In the same letter, Mr. Crilly enclosed a copy of the paper which he delivered at the May 1983 symposium. Those parts of Mr. Crilly's paper which refer to Canada have been reproduced here:

Railways are important in carrying Canada-U.S. trade. Rail freight is a major component of delivered price for many Canadian products (e.g. 20%-30% for lumber, about 40% for potash, 30% for sulphur, and 15% for woodpulp). In addition, Canadian railways are more dependent on transborder traffic (earning 25%-30% of their revenues from Canada-U.S. traffic) than are U.S. railways (about 5%).

Among several areas being affected in Canada-U.S. rail commerce, one key area is transborder freight rates. In the past joint international through rates have been used for most transborder rail movements. A single rate is paid by the shipper covering the entire haul (e.g. from Canadian origin to U.S. destination) even though the shipment passes over the lines of several railroads; the participating railroads divide the freight revenue among themselves.

Such rates have had a number of advantages. The shipper deals with a single body rather than with every railroad along the route. Further, since every railroad seeks as much profitable traffic as possible for its lines, partnerships develop between railroads and shipper industries in a given region; e.g., railways moving western Canadian forest products could help tailor through rates to enable western shippers to compete with U.S. producers supplying the northeast U.S. market.

This commercial framework has been possible in part because joint international through rates were (a) legally permissible and (b), once established, required by law to be published.

Under the new rules designed to encourage freedom of action and greater competition, railways now risk prosecution under anti-trust legislation (Sherman Act) if they discuss rates together. Precedents suggest the U.S. Government may reach across the border to prosecute Canadian railways discussing Canada-U.S. joint rates in Canada even though they are acting within Canadian law.

Such exposure to prosecution is a new and major discouragement to joint ratemaking within and across U.S. borders.

A further uncertainty in transborder ratemaking comes from the new U.S. regulations which allow confidential contracts. Any shipper-carrier pair may make a business agreement on terms and conditions special and unique to themselves. The contracts must be filed with the ICC but only a skeletal summary of their basic elements is made public. A common feature of these contracts is a rebate to the shipper (previously illegal) related to a traffic volume or commitment to the railway by the shipper. In Canada the only rate that may be charged is the rate published and on file with the Canadian Transport Commission. Rebates are forbidden.

Confidential contracts with rebates have major effects on Canada.

- Canadian shippers lose the benefit of knowing the real rail rates of their U.S. competitors; however, the U.S. competitors can still discover Canadian rates because of Canada's publication requirements. It becomes even more difficult for Canadian shippers and carriers to work together to penetrate U.S. markets.
- Where alternative routings exist with different haul lengths in Canada and the U.S., U.S. railways are using their new rebating

power to induce shippers to choose routes giving the U.S. railway the long haul. As a result, Canadian railways have seen their workload and revenues eroded.

As the Canadian trade implications of U.S. rail deregulation continue to emerge, they raise numerous questions for Canadians:

- How much further will the U.S. deregulate?
- How serious is the threat to Canada's economy and how can Canada's interests be protected?
- Are there areas of new opportunity for Canadians?
- Should Canada attempt to change Canadian and/or U.S. laws/regulations in the interests of the orderly and efficient development of trade, and if so what adjustment is necessary and practical?
- Can and should there be some joint Canada-U.S. regulatory planning in the future?
- What other joint actions might Canadian shippers, carriers and governments take in their common interest to respond to the competitive challenge created by the new commercial rules south of the border?

4.21 Western Grain Elevators Association

Inquiry officers met with representatives of member companies of the Western Grain Elevators Association.

Members of the Western Grain Elevators Association had so far been relatively little affected by changes resulting from *Staggers*, they said. However, they were careful to note that this did not mean that effects of *Staggers* were completely absent from their industry or that important effects, especially indirect ones, might not appear in future.

The major direction of traffic flows for Association members is, of course, East-West. However, there is some cross-border North-South traffic, especially in seeds and meal. In addition, some members have associated fertilizer operations with some cross-border trade and cross-border competition. Rail transport is less important than truck even in this limited trade, said several of those present, a fact attributed in part to a lack of railway responsiveness in competitive rate-making. Members were concerned, however, that any changes in Canadian rail legislation or regulation affecting cross-border traffic could require changes applying on domestic traffic and this could have far-reaching effects.

One representative noted that U.S. railways were "putting out feelers" for their traffic, although his organization had not shipped by rail for some time. While his organization had not decided to move any traffic by rail, the aggressive and positive action taken by U.S. railways since Staggers was encouraging. Canadian railways, however, were not sufficiently responsive to make the rail routing as a whole attractive, he indicated.

Another representative stated that his organization had had some dealings with U.S. railways since Staggers and that in many of those cases shipping was done on a "freight collect" basis at the buyer's request. The representative suggested that this was because of contract agreements between the railways and buyers which specified particular routings in exchange for rate rebates.

A number of members noted that they had experienced delays in obtaining through rates, especially to destinations where they had not previously shipped, since Staggers. In fact, through rates were not available on their products in general as a result of changes in U.S. legislation and rates quoted by U.S. carriers would have to be added to Canadian proportional rates to the border. Conrail was noted especially as a carrier from whom it was difficult to obtain rates rapidly for new spot sales. As delay in being able to quote prices could affect spot sales, this would appear to be a disadvantage to pricing methods available post-Staggers. On the other hand, members noted that there had previously been delays in obtaining rates through rate bureaus, when all railways which were members of the rate bureau were required to agree on the rate to be offered.

Association members noted that they expected competitors in the U.S. to gain slight advantages from Staggers over their Canadian counterparts. In part, this expectation was based on the observation that there were competitive railways serving much of the U.S., and the advantages of competition made available by Staggers would be stronger in the U.S. where there actually were railways able to compete for the same business. Conversely, members feared that Canadian railways might become less inclined to compete for their to-U.S. business after Staggers. On past experience, members felt that Canadian railways lacked competitive spirit and, where their long-haul could be lost in any transcontinental move, the Canadian railways might be even less interested in making efforts to secure members' traffic.

On the whole, members were more concerned — and at the same time more uncertain — about the long-run effects in Canada of Staggers than about immediate effects the U.S. law might have on their American business.

A change in Canadian law which would permit Canadian railways to enter into confidential contract rates could weaken shippers' ability to appeal rates through applications under s. 23 of the National Transportation Act, it was suggested. Members felt that any weakening of s. 23 would work to their disadvantage, as they felt it was one of the few tools available to force cost disclosure by the railways. Cost disclosure could, in turn, be very important in negotiating rates. Members thought it unlikely that adoption of confidential contract rates by Canadian railways on cross-border traffic could take place without extending the principle to domestic traffic also.

As well, members felt that experience with Staggers in an expansionary economy would be necessary before it could be assessed properly, and changes should not be made quickly in Canadian law to accommodate the U.S. law until more was known about the long-term effects.

5.0 PROVINCIAL GOVERNMENT PERSPECTIVES

5.1 General

Railways engaged in cross-border movements are under the jurisdiction of the parliament of Canada. Nonetheless, changes in the operations of those railways, possibly resulting from Staggers, could have effects which differed profoundly in different regions or different provinces in the same region. The main sources of variation in impacts are the importance of railways to a province's trade, the importance of railway operations themselves to provincial economies and the vulnerability of particular regional traffic to diversion or market competition.

Shippers from particular provinces and regions make different use of railways in transporting traffic to the U.S. as shown in Table 5.1.1. About 27 per cent of the value of exports to the U.S. moved by rail from Canada as a whole; however, this figure was only about 16 per cent for Prairie provinces and around 20 per cent for Atlantic provinces, but over 40 per cent for the Pacific Region.

Significant shifts in traffic flows and equipment utilization could affect the need for employees in regions through which the traffic flowed or in which repair facilities are located, whether or not these regions originate or terminate affected traffic.

Table 5.1.2 illustrates the value of railway labour income (including fringe benefits) generated in the provinces of Canada by overall railway operations. In total, this income amounted to over 3 1/2 billion dollars in 1982, perhaps a third of which is attributable to cross-border traffic (assuming labour income proportional to railway revenues). Dollar amounts of income generated in the different provinces vary greatly, ranging from about $900 million in Québec to under $50 million in Newfoundland in 1982.

Even relatively small dollar amounts may have great effect on particular provincial economies, however, as detailed in Table 5.1.3. According to the Table, railway income generated was equal to about three and a half per cent of provincial gross domestic product in Manitoba but only about 0.6 per cent of provincial gross domestic product in Ontario. For Canada as a whole, railway income was equivalent to about one per cent of gross domestic product.

The possible vulnerability of traffic from particular provinces to some extent depends on rail connections available and so can be estimated in part by examination of railway maps to which reference was previously made. Other factors affecting vulnerability of provincial traffic and rail operations to some extent were the subject of comments by provincial officials contacted.

Table 5.1.1

VALUE OF TO-U.S. TRAFFIC BY REGION
(\$000 CANADIAN)

A) 1979

FROM	TOTAL	RAIL	RAIL % OF TOTAL
ATLANTIC	1,949,128	421,597	21.6
QUEBEC	7,827,975	2,618,980	33.5
ONTARIO	21,927,745	5,779,768	26.4
PRAIRIES	7,858,579	1,417,608	18.0
PACIFIC	5,253,164	2,743,311	52.2
TOTAL	44,816,591	12,981,265	29.0

B) 1980

FROM	TOTAL	RAIL	RAIL % OF TOTAL
ATLANTIC	2,056,334	463,844	22.6
QUEBEC	8,942,095	3,080,430	34.5
ONTARIO	22,838,335	6,038,072	26.4
PRAIRIES	10,045,766	1,611,618	16.0
PACIFIC	4,545,963	2,195,767	48.3
TOTAL	48,428,494	13,389,730	27.7

C) 1981

FROM	TOTAL	RAIL	RAIL % OF TOTAL
ATLANTIC	2,518,869	446,681	17.7
QUEBEC	10,414,618	3,529,388	33.9
ONTARIO	27,005,373	7,241,294	26.8
PRAIRIES	11,485,784	1,803,378	15.7
PACIFIC	4,376,195	1,780,543	40.7
TOTAL	55,800,839	14,801,285	26.5

Source: Statistics Canada, External Trade Division.

Table 5.1.2

ESTIMATED RAILWAY LABOUR INCOME BY PROVINCE
($000)

	1978	1979	1980	1981	1982
NFLD.	30,430	31,871	35,595	40,826	44,635
P.E.I. & N.S.	82,001	87,063	73,632	84,452	92,332
N.B.	128,830	149,337	156,746	179,780	196,552
QUE.	588,071	662,076	715,784	820,973	897,564
ONT.	585,682	641,510	706,165	809,940	885,502
MAN.	305,385	354,345	398,566	457,137	499,785
SASK.	106,800	118,534	126,395	144,970	158,494
ALTA.	206,905	228,121	270,288	310,009	338,930
B.C.	252,353	284,565	346,173	397,046	434,087
CANADA	2,286,459	2,557,422	2,829,344	3,245,133	3,547,881

Note 1: Yukon & Northwest Territory labour income estimates not included for reasons of confidentiality.

Note 2: Values are estimated by Statistics Canada, Labour Income Section, by applying provincial distributions as determined in surveys to best estimate national totals.

Table 5.1.3

ESTIMATED RAILWAY LABOUR INCOME AS A PERCENTAGE OF PROVINCIAL GROSS DOMESTIC PRODUCT

PROVINCE	1979	1980	1981
Newfoundland	0.87	0.96	0.98
P.E.I. & Nova Scotia	1.25	1.01	1.03
New Brunswick	2.73	3.01	2.89
Québec	1.06	1.04	1.05
Ontario	0.63	0.62	0.62
Manitoba	3.43	3.55	3.58
Saskatchewan	1.08	0.97	0.97
Alberta	0.66	0.65	0.67
British Columia	0.87	0.95	0.93
Canada (less Yukon and N.W.T.)	0.95	0.94	0.95

Source: Statistics Canada estimated railway labour income divided by Gross Provincial Domestic Product (S.C. 13-213).

5.2 Atlantic Provinces

Officials of the Atlantic provinces indicated that their views were generally represented in this matter by the Atlantic Provinces Transportation Commission (APTC). APTC officials met with Inquiry officers and later made a written submission. Some additional comments were also provided by a P.E.I. official by letter.

APTC officials indicated that they had no current evidence of major impacts on shippers in the Atlantic Provinces as a result of the U.S. Staggers Rail Act of 1980. That is, there had been no great number of complaints brought to APTC's attention. Such complaints as had come to APTC's attention had been of minor impact and had been easily accommodated within normal business practices, or had predated Staggers.

APTC pointed out that trucking and piggyback, not rail freight, were dominant transportation modes for Atlantic Provinces traffic. Major commodities which could be impacted, as moved by rail, included pulp and paper and few others. In this regard, a recent paper by J.R. Edgar, delivered at the Centre for Transportation Studies, UBC, was cited as indicative of attitudes towards Staggers of Atlantic provinces forest products shippers. Mr. Edgar welcomed U.S. rate deregulation in that paper, but stated that Canadian railways should be permitted to enter into confidential contracts with shippers of export goods to put Canadian carriers and shippers on an even footing with their American competition. APTC officials noted that they would not necessarily support any extension of rate confidentiality to domestic traffic.

In their written submission, APTC supported changes in Canadian law to permit Canadian shippers and railways to enter into confidential contracts on export goods moving from Canada to the United States. APTC did not support a change allowing similar freedom on import traffic, however, although they acknowledged that equity considerations would normally dictate such a position. APTC argued, essentially, that a change in the law regarding export shipments would be simply re-active to a change in U.S. law; insofar as a change in law affecting import shipments would affect Canadian companies adversely, there was no need for such a reaction.

APTC supported these positions on the grounds that it was very unlikely that U.S. legislation would be changed in the near future and that changes in U.S. legislation were such that current Canadian law would not be sufficient to maintain the relative competitive position of Canadian shippers selling in the United States nor the Canadian railways' access to traditional traffic and routings.

In discussion, APTC indicated three instances brought to their attention where changes in U.S. law may have had slight impact on Atlantic Canada businesses.

In one situation, rates on soya bean meal to Quebec City from mid-west U.S. origins had been reduced by competing American railways, to the advantage of Quebec feed-lot operators. Similar reductions could not be obtained in New Brunswick by feed-lot operators there, who had no competitive service. While the relative disadvantages of shippers on local lines predates Staggers, these disadvantages may gain importance with the increased competitive freedom granted to U.S. railways by Staggers. No legislative change would seem called for, however, specifically in response to Staggers.

Mention was also made of a situation in which a pulp shipper faced price competition in a Kentucky market as a result of an American rival's ability to get favourable rates with American railways under contract arrangements. Again, this was treated as a normal business event. It did indicate, however, that uncertainty as to rates available to competitors using American railways and secret contract rates could be a problem area for some shippers and result in lower profits either through lost sales or unnecessarily lowered prices.

In a third instance, an industrial shipper indicated that changes in U.S. law may have helped them in making piggyback shipments, particularly since complete deregulation of TOFC/COFC traffic. That is, they were able to access U.S. equipment more readily, and in times where CN could not supply adequate amounts of intermodal equipment it could be obtained through U.S. carriers.

The P.E.I. official suggested four areas where Staggers could affect Canada:

Railway Competition

One effect of U.S. deregulation would be to give a competitive edge to railways in the United States over those in Canada. This could substantially reduce the volume of traffic enjoyed by Canadian National and Canadian Pacific Rail with the possible result of higher costs for the remaining traffic.

Through Rates

The removal of rate control in the U.S. could result in the elimination of through rates. The result would be combination rates which, in all probability, would be higher than the through rates presently available to Canadian shippers and receivers.

Return of Equipment

United States deregulation could adversely affect the cooperation between Canadian and United States railways with respect to routing and deployment of equipment. In all probability, U.S. railroads will select routing which will give them the longest portion of a combination movement and, in many cases, this could result in substantial delays in the return of Canadian rolling stock moved into the U.S.

Canadian Regulatory Policy

The fact that U.S. railways will no longer be required to publish rates and may in fact enter into confidential rate agreements with shippers again puts Canadian carriers and shippers at a disadvantage. There appears to be a great deal of merit in the CTC entering into discussions with the ICC with a view towards some revision of Canadian regulation to minimize the effects of U.S. regulatory changes on Canadian shippers and carriers.

5.3 Quebec

Inquiry officers met with officials of the Quebec Ministry of Transport and later received written comments from those officials and from the Quebec Ministry of Energy and Resources. Quebec Transport Ministry officials emphasized that their views should not be construed as a complete or official position of the Quebec Government.

Quebec transportation officials noted that they had not, as yet, received any official complaints concerning effects of U.S. Rail deregulation other than that made by Indusmin, an Ontario firm concerned by advantages accruing to rival American suppliers in an Ontario market. Nonetheless, they felt that there could be serious impact in Québec in the future, especially through effects on the rail network itself.

The prime potential problem of concern was the effect on the viability of international mainlines of loss of overhead traffic. This traffic could be threatened by confidential contract rates diverting traffic to American lines or by route closings in the United States. Route closings or other aggressive action on the part of connecting American lines was felt to be more likely since Guilford Transportation (a Mellon interest) acquired the Boston and Maine, Maine Central, and Delaware & Hudson Railroads which connect to the Central Vermont (controlled by CN).

In the view of Quebec officials, much of the province's officially mainline trackage is functionally branchline, especially that in the northern part of the province and, to some extent, that which is international. While this trackage is currently economic, loss of a significant portion of overhead (U.S.-U.S. via Canada) traffic could render some subdivisions uneconomic. The consequences of such an event could be multiple: reluctance to make investments on the part of shippers located on the subdivisions as the lines might be allowed to be abandoned and their future would not be guaranteed for more than five years at a time; pressure from the railways for higher rates from current shippers to maintain the economic viability of lines with consequent ill effects on current shippers; cutbacks in investment in railway line maintenance; reduced train frequency and other declines in service quality without corresponding rate decreases, possibly leading to traffic switching to truck from rail as a transport mode.

The overall results could be losses of jobs in both railway and shipping sectors of the Quebec economy and a weakening of the rail infrastructure out of all proportion to the marginal declines in traffic which might result. Even trackage connecting Montreal, Quebec and Three Rivers could be reduced to marginally viable branchline status in a worst-case scenario, according to the officials.

Consequently, the officials felt there was support within the Quebec government for changes in legislation to allow for confidential contract rates in Canada on overhead traffic. Loss of markets no longer accessible by rail as a result of rising rates could be of critical importance to companies even where most traffic from the plant moved by truck.

Since U.S. rail deregulation, Quebec officials said, it has become increasingly difficult for Quebec shippers to discover rates applying on their competitors' traffic or even to be sure of the correct rate applying on their own traffic. The inability to discover competitor's rates was thought a disadvantage especially to small shippers as it made evaluating competitive factors more difficult. The confusion of rate bases available, especially to destinations where through joint rates were not published, pushed up the cost to shippers of deciding what shipment routing to use. Officials said thousands of rates may not even be filed with the CTC. This lack of certain knowledge could be especially disadvantageous to smaller shippers. An example was used noting the number of rates available on lumber from Quebec to Texas points. In part for this reason, Quebec transport officials would continue to support collective rate-making in Canada, as advantageous to smaller shippers.

The Quebec Ministry of Energy and Resources also commented on possible complications arising from the additional knowledge and negotiation burden that could fall to Quebec shippers as a result of U.S. deregulation, and particularly as a result of boxcar deregulation. The associate Deputy Minister, Lands and Forests, commented that negotiations with each American rail carrier would be required by Québec lumber companies and that the cost of such negotiations would have to be justified by savings available thereby--but whether this would actually occur was yet to be seen. The ADM noted that Quebec producers were disturbed by provisions of the boxcar decision as as much of their shipments were made in boxcars as in flats and the producers feared that in times of car shortages, supplementary charges for car-return could have negative effects on profit margins.

The ADM commented, however, that there had been positive effects for the lumber industry arising from Staggers. Some lumber companies had obtained rates which permitted them to penetrate new US markets, including those in the southern states. However, it appeared that these advantages accrued essentially to large enterprises, as smaller ones had neither the human nor technological resources to master the complexities of transportation functions and take maximum advantage of possibilities opened up by Staggers.

According to Quebec Transport officials, there were some additional apparent advantages which could accrue to Québec shippers from U.S. deregulation. Mergers in the US could reduce the need for interswitching between small railways and bring some efficiency gains, for instance. It was also noted that for lumber moved to some yards in the US, combinations of proportional rates now available were lower than joint rates which would otherwise apply.

A general trend toward truck and away from rail was noted as a basis for some of the concern over the future of Québec's rail network. Equipment supply problems with rail were noted as one factor in the modal switch; it was felt these could be exaggerated by deregulation and by the currently applying customs regulations.

An example of potential rail traffic lost to truck was paper traffic from the Abitibi/Gatineau areas which formed a back-haul for inbound Florida citrus fruit carried by truck. Strictly speaking, this type of truck movement might be illegal under provincial regulations, however, the regulations were extremely difficult to enforce and the regulations were mainly honoured in the breech. As a result, deregulation of truck traffic in Québec would not likely accelerate the switch from rail as present regulations were so ineffective in controlling the traffic that they might already have been abolished.

5.4 Ontario

The Ontario government had made no official submission to the inquiry in time for inclusion in this report. However, a meeting was held with various Ontario officials.

Ontario officials noted that they had carried out discussions with a number of shippers in what they felt to be important rail-using sectors of the Ontario economy -- base metals, forest products and automotive companies particularly -- prior to the meeting and that the general response of shippers contacted had been positive towards Staggers. Clear benefits were perceived in terms of lower rates and responsiveness to shipper requests on the part of railways.

To some extent, the enthusiasm of companies for provisions of the Staggers Act varied with their sophistication in transportation matters and experience in contract negotiations, noted the Ontario officials. Even smaller companies with less developed or sophisticated traffic departments reported benefits from deregulation in the United States, however, and did not want the creation of barriers against their ability to enjoy those benefits.

The base-metals industry in particular seemed to have benefited from U.S. rail deregulation. For instance, market share was claimed to have increased in the U.S. for Canadian companies, who had become more competitive with lowered transportation costs. There had been a secondary benefit to the Canadian railway system from this as rail had increased from 50% to 80% its share of commodities transported in this sector, according to industry reports.

Ontario officials noted that rate benefits now enjoyed could disappear and shippers might actually be in worse positions than prior to deregulation, in the event of a strong upturn in the economy. Such an upturn could put pressure on rail capacity and allow railways to charge higher rates rather than discounting rates as at present. This concern for the future had been echoed to some extent by a number of companies contacted. Nonetheless, the companies felt that this was not a major worry.

Similarly, some shippers had expressed concern that gateway closings and limitations on switching could pose problems in the future. These were not seen as now causing any grave difficulty, however.

As well, some shippers had expressed concern as to the effect on negotiations of removal of traditional rail anti-trust immunity in the U.S. Ontario officials noted that they were not convinced that this concern was genuine or necessarily of much importance even to those expressing it.

Secret rebates apparently provided some of the greatest benefits of Staggers, but were also at the heart of some of the greatest potential problems perceived by Ontario officials. The low level of rates attainable since Staggers' passage depended in part on participation in confidential contracts containing rebate provisions. As well as providing lower rates, such contracts permitted confidentiality of rates actually effective on international movements, a factor of possible commercial value. It appeared to Ontario officials that this presented a possible conflict with Canadian law requiring publication of effective international rates. Canadian shippers participating in movements on which secret rebates applied attempted to avoid this problem by having rebates paid to American receivers by American railways participating in the move. As well, these rebates would only apply on American portions of the move.

There was some uncertainty in the shipping community about the exact legal status of such transactions, however. As well, since Canadian railways certainly could not offer secret rebates, American shippers had some advantages over their Canadian rivals in that rebates might be obtainable over the total haul and therefore be for greater amounts.

A solution to this situation could be legalization of secret rebates or other confidential contract rates in Canada on international traffic. In effect, this would mean that international rates would no longer be published. As shippers seemed generally to favour publication of domestic rates, this could be disadvantageous to domestic shippers. It was also apparent to Ontario officials that confidential rates could pose difficulties in proving or disproving claims of prejudicial treatment, as for instance in the case of an application under Section 23 of the National Transportation Act.

It was suggested, however, that loss of Section 23 protection was likely of greatest importance to small shippers, as large volume shippers had greater negotiating strength when dealing with railways. Ontario officials further suggested that there was a trend away from international rail shipment by small shippers. This was, in part, due to increases internationally in intermodal shipments by small shippers; this may, in turn, have been partly caused by conditions imposed by railways. If this was actually the case, suggested the Ontario officials, loss of Section 23 protection for international traffic by small shippers might be no great problem. They suggested that study of international shipments by size of shipping company might be carried out by the CTC as part of the present investigation.

The Ontario officials noted that there has not yet been sufficient experience with deregulation to determine all its effects or to be sure of the extent of residual regulation when current ICC decisions have been tested in the courts or modified by Congress. They remarked, however, that boxcar deregulation as currently determined could be a major problem for Canadian railways, as the railways were equipment owners.

Liability could be a problem for shippers under boxcar deregulation, as it has become under piggyback deregulation and fruit and vegetable deregulation. Ontario officials suggested that third party operators, like those now becoming important in piggyback movements, could become common in boxcar movements as well. That is, there could be parties buying boxcar space "wholesale" from railways and "retailing" it to individual customers.

The lack of effective mechanisms for dealing with the U.S. Congress on rail matters on behalf of the Canadian constituency was felt by Ontario officials to be as great a problem as any other made apparent by Staggers. That is, the U.S. Congress quite properly dealt with the accumulated problems of their railway system from an American perspective. Nonetheless, the U.S. Congressional solution could take account of impacts on Canada and specifically provide for Canadian interests without distorting the American plan provided Congress were made sufficiently aware of potential problems resulting from its actions. Similarly, regulatory decisions (such as the boxcar deregulation decision) which impact Canadian railways differently from American railways could take account of those differences if more direct communications existed felt the Ontario officials. In the trucking industry, they noted, there was direct liaison between provincial transportation departments, the ICC and other bodies and an international organisation existed which was dedicated to solving trucking problems. In the rail and rail-using industries, the communications channels were extremely convoluted. Shortening these lines of communication could be the most beneficial act the federal government could undertake in response to changes in the U.S. rail regulatory scheme. The trucking body might be used as a model.

The Indusmin situation was also discussed at the meeting as a possible example of a domestic Canadian shipper being detrimentally affected by Staggers. Ontario officials gave a number of reasons for believing that factors not directly related to rail transportation could be significant in that case.

5.5 Manitoba

In his submission to the inquiry, the Honourable John S. Plohman, Minister of Highways and Transportation, advised that his department has been monitoring the U.S. rail deregulation situation closely over the past three years and that the matter has been discussed with a number of transborder shippers. Through this and other sources, the Minister has acquired an awareness of the following particular problem areas:

- Canadian railways have experienced a serious erosion of trans-border traffic, shippers having opted for long-haul routing through the U.S. rail system to obtain the benefit of rebates and low, unpublished freight rates.
- small shippers lack the resources necessary to maintain constant surveillance of rail rate activities.
- an increasing trend towards fluctuating freight rates in the U.S. presenting serious problems for shippers - particularly those involved in advance sales and futures markets. Transportation costs must remain predictable to avoid chaos in the marketplace which is not possible with dramatic swings in freight rates.
- cancellation of routing options by U.S. railways, restricting shipper access to alternate routes.
- cancellation of short-line routes by U.S. railways forcing shippers to accept more circuitous and costly routes.

The Ministerial recommendations and observations are reproduced verbatim below:

It is recommended that these allegations be verified and the magnitude of the problem identified to determine the requirement for corrective action. This information is obtainable from shippers and the railways. Data should include the identification of specific traffic losses, volumes, revenue, etc., as well as the impact on Canadian rail employment.

The following observations are offered for your consideration:

- The Canadian railways have extensive freedom to set rates at levels sufficient to meet competition from the U.S. railways and they should be encouraged to do so in the interest of both rail viability and protection of rail jobs.
- The denial of routing options and compelling shippers to accept more circuitous and costly routes is contrary to the public interest since it is restrictive, inefficient and results in a waste of valuable transport and energy resources.
- In a deregulated environment, carrier discrimination and pricing selectivity between commodities can be expected to become increasingly prevalent once the demand for transport services exceeds the available

supply. Thus, claims of discrimination may be expected to increase as the economy begins to recover and the demand for rail service accelerates.

- Canada/U.S. conflict in transport policy setting is becoming more frequent. Dialogue between Transport Canada and the U.S. Department of Transport should be encouraged in the development of policies and programs affecting trans-border traffic and trade. Manitoba has also recommended in past that a joint I.C.C./C.T.C. Committee be established to review disputes involving international traffic. Clearly, more effective communication is required between both the policy and regulatory agencies to encourage the unencumbered movement of goods and people between the two jurisdictions. A responsible process would also solicit the views of shippers, carriers, and provincial governments.

As a matter of policy, the Province of Manitoba opposes any statute that promotes unjust discrimination between shippers or regions. Freight rates must meet developmental needs in the interest of economic diversification and job creation. This is not possible in an environment which allows the railways to take undue advantage of monopoly situations.

5.6 Saskatchewan

Mr. N. Petrovitch, Acting Executive Director, Transportation Agency of Saskatchewan, described the case of an American company which has a Canadian subsidiary. Concerning north to south movements, the company personnel come to Canada to speak to the Canadian railways because they prefer not to have the discussion in the U.S. office due to their fear of U.S. antitrust laws. In Canada, they speak to one railway at a time due to the same fear.

Two shippers that Mr. Petrovitch knows of in Saskatchewan consider deregulation is great for rebates and other "deals". Also, competition among U.S. carriers is providing them with lower rates and they wish to benefit as long as the situation lasts.

The question was raised as to whether U.S. deregulation would have benefitted shippers about four years ago when there was a car shortage. Mr. Petrovitch believes that, at the time, the shippers did not think about it. Now even small shippers who have access to major rail centres are playing the railways off against one another and deriving benefits therefrom. It could be that deregulation is a great instrument during a recession, he suggested.

Mr. Petrovitch remarked that some potash producers would prefer the demise of S. 279 so that they would be in a position to play off one railway vs. the other wherever that is possible.

Large shippers are very pleased with the confidential contracts because they work hard to achieve a competitive edge (cost and leadership wise) and they do not wish any less competitive firms to benefit gratuitously from their efforts.

The U.S. producer can get into the Canadian market because he knows the Canadian producers' rates (published). This is unfair to Canadian producers, Mr. Petrovitch believes.

If Canada were to adopt confidential contracts, Section 23 could become useless because no one would possess the information with which to make a prima facie case, Mr. Petrovitch observed. He remarked that a discovery procedure would be important in maintaining any of the usefulness of Section 23 in a system where confidential contracts were adopted in Canada. In such a situation, it would be necessary that the CTC maintain on file copies of the contracts.

Canada's options have been reduced for the following reasons:

1) The shakedown of S.R.A. is not complete
2) The S.R.A. implementation impact has not reached its peak
3) The recession clouds the issue
4) The complete re-structuring of the U.S. railway system through merger and acquisition is occurring probably in a bid to escape antitrust problems associated with collective rate-making.

In general, Saskatchewan shippers are smaller in output than those in other provinces and generally they are served by only one railway, Mr. Petrovitch observed. He was therefore concerned that they would be subject to greater pressure from the railways than shippers in other provinces if the railways suffered impaired earnings as a result of U.S. rail deregulation. He also believes that the position may be that the Saskatchewan government would probably prefer to support informational assistance to shippers (in a format similar to the Atlantic Provinces Transportation Commission) rather than a major change in transportation legislation.

5.7 Alberta

Inquiry officers met with staff of the Economic Development Department of the province of Alberta and later received a written submission from the Department.

In developing their perspective on effects of U.S. rail deregulation, Alberta Economic Development initiated an interview program with Alberta based shippers. The shippers interviewed included representatives from the coal, sulphur, oil and gas, fertilizer, chemical, forest products and agriculture industries. The interview program was not designed to ensure statistical relevance, but the organizations contacted account for a large portion of the rail freight tonnage originating in Alberta in several important sectors.

In general, shipper response to Staggers was positive. The majority of the shippers interviewed who exported to the United States believed Staggers had put downward pressure on rail rates which in turn had allowed them to expand their markets beyond traditional geographic limits. Some difficulties had been experienced, however, and certain provisions of Staggers could cause problems in future. Both shippers and Alberta government officials thought it important that the Canadian government not over-react to changes resulting from Staggers and that steps taken to minimize problems should not also reduce benefits.

In general, shippers contacted (including large corporations) continued to support publication of rates as now required by Canadian law. However, at least some interviewees desired confidentiality of rates on international traffic as U.S. law now provided competing U.S. firms with it through confidential contracts. A system of published domestic rates and confidential international rates could present problems, however, especially where U.S. and Canadian shippers might both seek Canadian markets.

Publication of rates helped equalize conditions for competition and was considered as a positive measure for that reason. Most shippers had a feel for their competitor's transportation costs and the rates available to them even where those competitors had confidential U.S. contracts, however, the Alberta officials reported. The Alberta Government noted, however, that deregulation has significantly reduced the role of the rate bureau in the U.S. and over time this role will be reduced even further. One of the prime functions of the rate bureaux has been to publish freight tariffs. As the importance of the bureaux diminishes in the deregulated U.S. environment, said Alberta, the amount of freight information available to shippers will also be reduced. This occurrence, in addition to the confidential contract rates which currently exist in the U.S., will limit the competitiveness of Canadian shippers. It would be advisable, according to Alberta, to investigate the feasibility of establishing or using a transportation information service which could fill this information void. Such services are currently available through a few U.S. firms which maintain a computerized data base of rates and routings.

Shippers sometimes noted that they had taken advantage of provisions of the U.S. law indirectly by helping receivers to arrange confidential contracts with U.S. railways or by having rebates paid to U.S. subsidiaries of the Canadian shipper. Shippers reporting this did not see anything against Canadian law in what they were doing.

Rates obtainable through contracts had frequently resulted in greater market penetration by Canadian firms, according to reports. In one reported case, sulphur shippers were finding new markets in Florida, a state which is itself a sulphur producer. On the other hand, some Northern Alberta forest products producers had reported loss of market share to U.S. competitors able to obtain favorable U.S. rates for the complete haul length to market. Similar difficulties occurred especially for shippers essentially captive to one railway.

Some shippers had reportedly remarked that current rates could be simply a result of depressed economic conditions. The advantage gained through Staggers' provisions could very well be temporary and with economic recovery or with strengthening of individual U.S. railways through mergers, the situation could worsen in future. Even so, these shippers would not assess Staggers negatively.

According to Alberta officials, shippers reported more difficulties due to the differences in responsiveness of Canadian railways than difficulties resulting from Staggers. While this was likely due in part to differences in management style between the two railways, some of these differences might also be due to differential effects of Staggers on the two lines. C.P. Rail was reported to be more responsible to shipper wishes, in general, but also, through its subsidiary Soo Line Railroad, could control long haul movements in the United States as well as in Canada, whereas CN Rail had no similar U.S. subsidiary carrier serving the West. Some support had been expressed among shippers for acquisition of the Milwaukee Road by CN so that the railways would be more equal in this respect with possible beneficial effects on relations between CN and its customers.

The necessity for shippers to become more involved in rate negotiations was mentioned as a problem by some shippers. Again, this was not felt to offset benefits available as a result of negotiations with U.S. railways; difficulties in negotiating published rates with Canadian railways were more often mentioned as a problem. Clarification of the meaning of removal of anti-trust protection in U.S. law was mentioned as possibly useful to shippers who were currently unsure of their rights to bargain collectively with Canadian railways on U.S.-bound traffic.

Route closings were mentioned as a problem only by one shipper interviewed by the Alberta officials--and that shipper had objected to closing of the Emerson gateway for sulphur traffic by CN Rail rather than any action by an American line. Several shippers reported no problems with maintaining through rates. The Alberta Government cautioned, however, that:

> "Although deregulation has encouraged competition in some areas it has allowed U.S. railways to discourage competition in others. Examples of the latter include gateway closures and the cancellation of interswitching arrangements where the objective of the railway involved is to limit shipper routing alternatives. These steps may enhance profitability, but probably at shipper expense. While income transfer from the railways to shippers may, in some instances, have a net positive impact on the transportation system, when such transfers are achieved through restricting competition they can reduce transportation efficiency. While restrictive railway practises such as these have not been common occurrences in Canada to date, one instance may be cited where a Canadian railway has eliminated a particular gateway to U.S. rail connections for sulphur shippers. The remaining routing options available to the sulphur shippers involve a longer haul in Canada. In this situation, where shipper supplied rail cars are often used, and mileage compensation rates paid by the railways is higher in the

U.S., shippers will receive a reduced amount of compensation over the total route. It is important to ensure that measures exists to deter such events as the above from happening in Canada in the future."

Some companies had attempted to protest rates imposed by U.S. railway companies since passage of Staggers and reported that Staggers provisions made the burden of proof on the protesting shipper much greater and the length of proceedings was greater than pre-Staggers as well. Shippers also objected to the expense and difficulty of protesting rates in Canada, however, under Section 23 of the National Transportation Act.

The Alberta Government submission summarized their position by stating that:

> "Inconsistency between American and Canadian railway legislation has caused significant problems for Canadian carriers and for some shippers. It does not necessarily follow, however, that it is essential to change Canadian laws to conform to those of the United States. Canadian carriers and shippers have avenues available to them to lessen the impact of these legal conflicts. If it is ultimately decided to change Canadian regulations to assist in the minimization of these conflicts, it is important to refrain from making changes which fundamentally alter the Canadian transportation environment. Major changes should only be undertaken based on a comprehensive review of transportation policy."

5.8 British Columbia

Inquiry officers and Donald A. Kasianchuk, Assistant Deputy Minister, Ministry of Transportation and Highways, Province of British Columbia, met for discussions. Other B.C. officials were contacted at a later time.

About 50% of B.C. revenue comes from the forest-based sector of that province's economy, said Mr. Kasianchuk, and a major concern is naturally, therefore, the possible effects of Staggers on the forest products industries. As well, the B.C. government could be affected as the proprietor of a railway. Mr. Kasianchuk noted, however, that economic effects of Staggers and other U.S. deregulatory legislation could have implications for the Canadian confederation at its very basis.

Mr. Kasianchuk remarked that the B.C. forest product markets were very price sensitive. Insofar as forest product companies gained any advantage from secret railway rebates, therefore, the B.C. government would not oppose such rebating. Problems of parity with U.S. rates could arise as such rates might not be known, given the prevalence of contracts with secret rate and rebate provisions, however. This could further affect the B.C. government as the "stumpage" rate paid by the province was designed as a freight offset.

Route cancellations by American railways could cause problems for B.C. shippers, said Mr. Kasianchuk, as any loss of a rail routing could be detrimental. However, the main problem experienced thus far had been in maintaining a barge connection with the Burlington-Northern, Union Pacific railways through Seattle -- a connection supposedly guaranteed as a condition by the ICC of allowing the merger forming the Burlington-Northern company. This whole matter was currently being pursued through appeals. Other B.C. officials contacted later stated that this barge connection was particularly important to shippers otherwise captive to BCR/CN routings, in order to supply rate competition.

B.C. officials suggested that loss of anti-trust immunity could have effects on the BCR, in that it had formerly been represented on tariff bureaux through CN and/or CP. With the loss of anti-trust immunity, BCR might have to negotiate all through rates with each possible connecting railway on its own behalf, and likely did not have much leverage in such negotiations. Shippers, similarly, would have greater pressure put on their abilities to negotiate with railways in the new deregulated climate. Less sophisticated shippers and smaller shippers with fewer resources to spare for research might therefore suffer relative disadvantages as the gathering of commercial intelligence on transportation costs becomes increasingly difficult.

The overall Canadian economy could suffer in two major ways from U.S. deregulation, suggested Mr. Kasianchuk. On the one hand, the railway industry here could suffer. Canadian railways traditionally had had advantages based on their abilities to move traffic transcontinentally without inefficiencies caused by multiple interlinings. With expected mergers in the U.S., railways there might be able to offer the same advantages in the near future. This could increase the probability of Canadian lines losing long hauls, a situation currently threatened by American railways' ability to offer secret rebates not available in Canada. Canadian railways might even lose the short haul, if truck deregulation joined with low single-line railway rates in the U.S. permitted very low rates by the combined American-dominated move. Loss of transcontinental movements of international traffic could threaten the viability of transcontinental domestic lines in some cases, recalling the period in Canadian history when a "bridge" subsidy was paid by the government for traffic moved between Winnipeg and Central Ontario.

The economic viability of the country as a whole could also be undermined to some extent by rail deregulation in the U.S. in combination with other factors. This could particularly affect the manufacturing sector as Canadian branch plants generally had higher unit costs than their American parent. Significant reductions in U.S. transportation costs could further threaten the market position of the Canadian branches, leading to their closure and increased "deindustrialization" of Canada. Solutions to this sort of problem would lie more in the customs/tariff agreement area than strictly in the transportation sector, however.

In the short term, other B.C. officials perceived mixed effects from Staggers. That is, some shippers were able to get better rates on their traffic for the U.S. portion of trips, thus experienecing some cost savings. On the other hand, these same shippers might be in relatively worse competitive positions as U.S. shippers could enjoy better rates for the complete trip to market.

6.0 ISSUES AND EFFECTS

6.1 General

Our Terms of Reference provide an overall direction as well as four specific terms. The overall direction is that we inquire into and report "on the known effects and the implications for Canadian railways and shippers of the deregulation of the U.S. rail industry resulting from enactment of the Staggers Rail Act of 1980 ...". The original request for this inquiry was directed to the Canadian Transport Commission as the body responsible for the economic regulation of railways in Canada, and the furtherance of the National Transportation Policy contained in the National Transportation Act. Specific terms of our TOR refer to economic harm to Canadian interests, challenges to the jurisdiction of the CTC and possible legislative or other redress required.

In this context we take the overall issue for this inquiry to be: Has a need been shown for changes in Canadian law as a consequence of economic harm or legal contradictions resulting from enactment of Staggers?

In order to clarify this over-riding issue and aid in its resolution, we have grouped below two sets of issues - legal and economic -raised by various parties in submissions or discussions. We have attempted to outline the positions of various parties on these more particular issues where disagreements were registered and to note possible resolutions where these were suggested.

6.2 Economic Issues

The National Transportation Policy (Section 3 of the National Transportation Act) is designed to provide for "an economic, efficient and adequate transportation system ... to protect the interests of the users of transportation and to maintain the economic well being and growth of Canada ...". That is, the interests of users of the transportation system includes the existence of a transportation system able to operate economically and grow or change to meet transportation needs. The railways are an important part of this transportation system.

Given a viable transportation system, the Policy considers the interests of users to be paramount, and in particular, it requires that "each mode of transport, so far as practicable carries traffic to or from any point in Canada under tolls and conditions that do not constitute ... an undue obstacle ... to export trade in or from any region of Canada ...". Several parties have suggested that the balance between the needs of shippers in getting goods economically to markets and the needs of railways to remain economically viable has been upset by Staggers. We believe that, by and large, the main issues can be considered as involving either Diversion of Traffic or Confidentiality of Rates.

Diversion of Traffic

CN Rail and CP Rail personnel suggested that U.S. railways employed tactics allowed under Staggers to divert traffic from the Canadian lines. These practices allegedly gave U.S. railways the longer share of the haul and hence the greater share of revenues in joint moves. Methods employed included: 1) offering secret rebates to shippers; 2) cancellation of traditional routes; 3) surcharging of Canadian long-haul routes; and 4) maintaining, by contract, confidential rates on certain routes where competing Canadian routes would require rate publication. The Canadian railways claimed losses totalling in the tens of millions of dollars from decreased revenues and from loss of control of their car fleets, diverted onto lines of U.S. companies.

Various shippers, however, contended that their interests were generally advanced by these U.S. railway tactics. In particular, they noted that rebates paid either to Canadian shippers or to their American customers had made possible sales in markets they could not previously penetrate. In other cases, profitability, hence long-run competitiveness, was improved. Shippers did not, in general, complain of routing options lost through cancellations or surcharges, and some declared that they believed only inefficient routings were cancelled.

Quebec government officials expressed concern that loss of "overhead" traffic could result from U.S. railways' tactics, and this could, in turn, weaken the Quebec rail network with possible long-run ill effects on Quebec rail shippers. However, officials of the Quebec government, like officials of other provincial governments, also found advantages to shippers in the province as a result of diversion tactics.

Railways were reluctant to provide detailed examples of these diversion effects for public examination. CN Rail officials, in fact, noted that often they had been able to forestall traffic losses but only by reducing profit margins on traffic. Nor were concrate examples of savings provided for public examination by individual shippers or industry groups.

A large number of court cases have been launched in the United States against massive route cancellations and surcharges and a number of those which had originally been approved by the I.C.C. have been referred back to it by higher courts for reconsideration. The extent to which these practices will be allowed to continue in the U.S. even assuming that they are wanted in a changed economic climate, is not clear, therefore.

Several large shippers have suggested that allowing Canadian railways to participate in confidential contracts would improve the position of Canadian railways to compete with U.S. railways. This would also allow shippers to enter into such contracts for the entire haul to markets, possibly to their further advantage. CP Rail has specifically suggested allowance of confidential contract rates on "overhead" (U.S. to U.S. via Canada) traffic to maintain Canadian routes competitive with U.S. ones.

It was also suggested by some railway officials that on cross-border traffic, Canadian railways ought not to be subject to greater restraints than U.S. railways in terms of freedom to apply surcharges or cancel routes. In effect, no appeals under Section 23 of the N.T.A. should be allowed where Canadian railways applied surcharges or cancelled routes on cross-border traffic as American law had no equivalent of Section 23. Some shippers, especially those with very strong market positions and thus strength in bargaining with carriers, were agreeable to this idea. Many are strongly opposed, however, on the grounds that competition in rail transportation was more limited in Canada than in the U.S. and some protection for Canadian shippers was therefore needed.

No evidence was adduced as to the effects on small shippers or the net effects on larger shippers and railways of allowing these types of changes. However, both shippers and provincial government officials suggested that effects could be negative and that this question should be investigated before any action be taken.

Confidentiality of Rates

Having all rates published in Canada worked against Canadian railways and shippers, according to some representatives of each of these groups. Others felt that, while non-publication of rates in the U.S., where it occurred, was disadvantageous to Canadians, it should not be countered by non-publication of rates in Canada.

Non-publication of rates within the U.S. could occur in two circumstances: as a result of having rates specified in confidential contracts or as a result of complete deregulation of particular traffic (such as fruit and vegetable traffic or piggyback or boxcar traffic). In the latter case, no published rate at all need exist, while in the former case, a published rate might still exist which would apply on non-contract traffic. Contracts might, for instance, offer rebates on traffic moving under published international rates.

American railways, knowing rates charged by Canadian railways, could know exactly how much of a rate advantage would be sufficient to move traffic by a particular route, while Canadian railways bidding for the same traffic would have to guess at rates offered by their competitors. Similarly, U.S. shippers would be able to estimate Canadian shipper costs of accessing particular markets as they would know the rate paid for at least the Canadian section of any haul to market; Canadian shippers would not so readily be able to estimate U.S. shipper costs. With this advantage in knowledge, the U.S. shipper would be in a better position than the Canadian one to maximize his profits in serving the same markets.

As well, certain shippers argued that there was a cost associated with negotiating rates with railways, but that other companies who had not paid that cost still reaped the benefit when rates were published; thus Canadian companies were relatively disadvantaged compared to U.S. ones in gaining individual returns from investing in rate negotiations.

Neither shippers nor railways putting forth these arguments demonstrated the total economic costs to them of having rates published.

On the other hand, certain shippers and provincial government officials argued that publication of all rates had been determined to be a positive thing under Canadian law. Publication permitted equal access to rate information so that expertise in production and commerce was not outweighed by lack of knowledge about transportation. As well, laws against unfair discrimination could be enforced only at great expense to individual shippers if they were required to go to extreme effort to discover what rates might apply to shipments made by others in substantially similar circumstances. The costs of determining rates and negotiating them could only increase if provisions similar to Staggers were incorporated into Canadian law. Increasing the difficulty of discovering rates would thus serve no good economic purpose from an overall perspective. As well, the costs of such a system would fall heaviest on small shippers or on those with less sophisticated traffic departments.

Persons holding these positions did not make systematic attempts to estimate either their own or global costs of adapting to a system of rates which were not all published.

Those favoring changes in the law generally suggested adoption in Canada of provisions of Staggers. Those opposed suggested that subsidies might be paid to rate investigation bureaux to determine rates which were not published due to U.S. deregulation, or that other information services be made publicly available.

There was no general agreement as to whether adoption of confidential rate provisions on international traffic would necessitate similar provisions for domestic traffic or whether this was desirable.

6.3 Legal Issues

Four main areas of concern were mentioned where U.S. and Canadian law might demand contradictory behaviours or Canadian law might demand actions made impossible by new U.S. law. A number of lesser difficulties were also mentioned.

Legality of Contract Rates

Both CN Rail and CP Rail officials suggested that if contracts governing shipment of cross-border traffic contained provisions for rebates which were not published in tariffs filed with the C.T.C., provisions of the Railway Act would be violated, in particular Ss. 380(1), but also 269(4), 275(4), and 289(1). All these sections require publication of rates for traffic moving within, into or from Canada. Several shipper representatives also expressed doubt about the legality of rates contained in such contracts.

On the other hand, railways and shippers also agreed that certain types of contract provisions might not be in violation of Canadian law. In particular, rebates not published in tariffs but payable by a U.S. railway for U.S. movements of traffic and paid to a U.S. receiver, shipper or broker would not likely be found illegal in Canadian law in the view of these parties.

No single particular case or contract has been impugned before the C.T.C. by any party, however, and no case law has been developed which might clarify issues raised.

Compliance Difficulty with Canadian Law

As a result of a C.T.C. decision (the so-called "Woodpulp Disparities Case"), certain rates applicable on Canadian woodpulp moving to U.S. destinations must be published to maintain "parity" of rates with U.S. producers. That is, a set relationship between U.S. and Canadian rates is to be maintained. CN Rail officials in particular have argued that Staggers provisions admitting of confidential contract rates, as well as increased modal and intermodal competition, have made this requirement impossible to attain.

Representatives of the Canadian Pulp and Paper Association, on the other hand, submitted that the basic rate structure for their traffic continued to exist and rates continued to be published for movements to American markets whether these movements originated in Canada or the U.S. The extent of rebating could not be definitely determined and in any event might be of only very short-term import, possibly resulting from either general economic circumstances or particular difficulties of intermediate carriers.

While railway officials suggested that Section 23 applications should be reviewed and rejected in the light of actions taken in the U.S. following Staggers, shippers often remarked that weakening of S. 23 protection should not be contemplated.

Discovery Problems

Indusmin Ltd. suggested that Canadian shippers might face competition in Canadian markets from U.S. shippers able to obtain non-compensatory rates through contract arrangements. While these rates would apparently be contrary to Canadian law, they might not be discoverable if they were not, in fact, required to be published in Canada. The possibility was also raised by shippers and provincial government officials that whether an "act or omission" by a railway company "contrary to the public interest" forbidden by S. 23 could be proven to have occurred might be impossible to discover if confidential contract rates continued.

No direct attempt has been made in Canada to discover whether these difficulties are real and relevant through actual cases, however.

Interpretation

Shippers and provincial government officials especially suggested that the practical meaning of several sections of Staggers, hence the possibility of contradiction with Canadian law, depended on the interpretation of the law in various court proceedings now underway in the U.S. They warned that too hasty changes in Canadian law could be dangerous to Canadian interests on this account.

A number of parties suggested that closer liaison should be established between Canadian and U.S. regulatory agencies who must administer their different laws as well as between the two countries legislators in making those laws so that compliance difficulties could be minimized and special circumstances affecting cross-border movements fully taken into account in decisions.

Other Problems

U.S. legislation permits limitation of liability in confidential contract provisions as well as publication of rates applied on goods where shippers may claim only limited liability. Settlement of claims on goods received in Canada has therefore become much more difficult as suit must be made in state courts of the originating shipper should the Canadian destination carrier refuse to accept the liability that an American carrier has refused. Canadian carriers must obtain C.T.C. permission to limit liability according to a C.T.C. general order whose revision has been under study for some time.

Railways in Canada are permitted and may be required to agree on rates and exchange cost information on movements where they do not necessarily form a joint route. Under U.S. law, railways taking such action may be liable to prosecution under anti-trust statutes. CN Rail and CP Rail have jointly petitioned the I.C.C. for immunity from prosecution on the Canadian portion of joint international movements, but their success is in doubt. The railways have suggested diplomatic pressure be brought to bear on the U.S. government on their behalf in this matter.

7.0 PRELIMINARY CONCLUSIONS OF THE INQUIRY OFFICERS

We have stated our belief that the overall issue of concern here is: Has a need been shown for changes in Canadian law as a consequence of economic harm or legal contradictions resulting from Staggers? We have construed the issue in this way at least partly because of a philisophical bias expressed in the maxim "Old law is good law".

Markets change rapidly; businessmen are free to innovate and take advantage of new ideas and inventions. However, investments are not always recoverable in a short time; they may need to be substantial and carried out over a number of years before any costs may be recovered at all. This is equally true of a mine or forest products concern as it is of a railway line. Rapid and frequent changes in markets and demands for products and services may be predictable and it is part of business expertise to anticipate these changes or so conduct a business that advantage can be gained from change. The risk of change in markets is accepted as the basic price of earning profits.

The risk of sudden, frequent, and profound changes in the law is, however, a different matter. Legislative or regulatory change may affect a wide range of businesses. It would be unfair to businesses to expect them to be as expert in anticipating and planning for legislative change affecting many different types of enterprises as they are in the conduct of their own particular affairs. In fact, many parties with whom we have consulted expressed their pleasure in having an opportunity to contribute their views on issues and be informed of possible legal developments before being bound to obey laws which could have profound and unguessable effects on their daily activities.

The affairs of legislators and regulators are quite different from the business of entrepreneurs at least in this: Innovation in business is generally thought to be a good thing in itself; innovation in the law is generally thought to be a positive evil, only redeemable if it corrects some greater evil. The businessman feels free to tinker with his products, but legislators and regulators are thought to be best guided by the maxim: "If it ain't broke, don't fix it."

We have reviewed the submissions and discussions described in this report in an effort to discover whether there is evidence of a legal or economic breakdown which needs repair. We are more struck by the uncertainty expressed by parties than by the weight of positive evidence presented to us. Additionally, it seems to us that parties complaining of consequences of Staggers may well have remedies available to them which they have not thoroughly tested and which do not require changes in Canadian law. Where some have complained of injury, others have found benefit and it is by no means clear that changes in the law would strike a better balance.

A great deal of litigation has been initiated in the U.S. as a result of Staggers. Issues before the courts which are not yet resolved include limits on route closings, variations in car-hire rules, interlining of traffic, protective conditions for railways affected by mergers, and surcharging of joint rates. The current Chairman of the I.C.C. has remarked that rates applicable under contracts are surely an "essential term" of such contracts and ought to be published and this too might be litigated in future. As remarked by many of the representatives of shippers and government officials with whom we met, the concrete meaning of Staggers will not be clear for some time.

It was also remarked by a number of persons that a very major and severe recession has endured almost throughout the period in which Staggers has been in effect. The market for rail services, perhaps even more than the market for other services or goods, has been quite depressed. Again, there is little evidence as to what may be expected as a result of implementation of Staggers in a strong or expansionary economy. While shippers, railway officials and provincial governments differed in their speculations of what might result, all admitted that they could only conjecture.

CN Rail officials have suggested that there is a degree of conjecture in interpreting even statistics already recorded. For instance, they said, much of the effect of competition, including competition resulting from secret rebates, was to reduce railway profit margins rather than cause actual traffic losses or even re-routings. In the economic climate recently experienced it would be unreasonable to attribute lowered profit margins exclusively or even largely to changes resulting from Staggers.

A number of parties expressed their uncertainty about the legal position of Canadian companies engaging in contracts with American railways if the contracts included rebate provisions which were not published in Canada. So far as we are aware, however, the only definitive test of whether a contract is legal is to have a specific case tested before the Commission. Similarly, railways had speculated on the effects of changes in tariff provisions but have not made them, and have not subsequently had them appealed. No attempt has been made to demonstrate that disputes and conflicts possibly arising from Staggers are actually irresolvable under current Canadian law. This suggests to us that whatever problems are actually being experienced, they are not of sufficient gravity or urgency to any person that they are willing to devote time or money to pursuing judicial determination of the matter. If there is not a single case worth taking up in this way, if only to prove that the law is inadequate, we have no reason to prejudge that the law needs changing.

Section 23 of the National Transportation Act states that "a person" may apply for leave to appeal acts or omissions of rail carriers which may prejudicially affect the public interest, where the public interest is at least partially defined in Section 3 of the same Act. Section 3 of the Act enunciates a National Transportation Policy designed to provide for "an economic, efficient and adequate transportation system...to protect the interests of the users of transportation and to maintain the economic well-being and growth of Canada...".

In the course of our inquiry, no one has challenged the National Transportation Policy.

No one has shown the provisions of the National Transportation Act or other legislation to be inadequate to further the National Transportation Policy.

No one has proved either damage or substantial likelihood of damage resulting from implementation of Staggers. Indeed, no one has been willing to put their claims to the test of open scrutiny, let along judicial scrutiny.

On the basis of the known and implied effects of implementation of Staggers, we could not say there is any need for change in Canadian law. "It ain't broke."

We can only conclude: "Don't fix it."

In more formal terms: we are not persuaded on the basis of evidence currently available that changes in Canadian transportation law are necessary or desirable. New and substantial evidence would have to be brought to public view for us to recommend such changes.

APPENDIX A

TERMS OF REFERENCE

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That the Commission inquire into and report to the Minister no later than one year hence, on the known effects and the implications for Canadian railways and shippers of the deregulation of the U.S. rail industry resulting from enactment of the Staggers Rail Act of 1980 to include, without restricting the scope of the inquiry:

a) Given that the maintenance of traditional rate relationships (such as parity) as they relate to joint international through rail freight rates have been found by the C.T.C. to be in the Canadian public interest, has the Staggers Rail Act of 1980 had the effect of making any change in these relationships thus interfering with a condition that is favourable to Canadians and in the Canadian public interest? If so, a full explanation would be offered in the C.T.C.'s report to the Minister.

b) Given that joint international through rates have existed for decades and are treated as legal rates by carriers and shippers in both Canada and the United States, what, if anything, in the Staggers Rail Act of 1980 operates to call the legality of such rates into question or to challenge the C.T.C.'s traditional jurisdiction over the Canadian portions of such rates?

c) If so-called rebates are being paid by U.S. roads to Canadian shippers, is this a practice that violates any Canadian law? Even if it does not violate our laws, what practical effect does it have on:

   (i) Canadian shippers;

   (ii) Canadian railways?

   If the effect is adverse to Canadian interests, what steps might be taken (legislatively or otherwise) to diminish the harm to our interests?

d) What are the effects on Canadian shippers and railways of cancellation by U.S. roads of certain routes, thereby affecting length-of-haul and possibly causing Canadian shippers to have to use U.S. roads for greater portions of the haul, thus depriving Canadian roads of their traditional divisions?

APPENDIX B

PERSONS AND ORGANIZATIONS CONTACTED

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Inquiry officers met with a great number of individuals and received written comments from others. We have listed these persons and organizations below but in no particular order. We apologize for any errors or omissions there may be as we would like to express our gratitude to all who took time from their schedules to aid us in this inquiry.

CN Rail:

J.H.D. Sturgess, Vice-President, Marketing

J.M. Provost, Asst. Vice-President, Market Development and Pricing

J.D. (Jack) McIntyre, System Manager, Pricing, Tariffs and Commission

Walter D. Spencer, National Manager, Forest Products and Construction Materials

Herman Berkenbosch, Manager, Market Development and Pricing, Forest Products/Construction Materials

G.A. Rogers, Financial Planning Officer, Forest Products and Construction Materials

CP Rail:

R.C. Gilmore, Vice-President, Marketing and Sales

Richard Lande, Manager, Economic Development, Marketing and Sales

Wm. J. Ryan, Asst. Vice-President (Sales), Marketing and Sales

C. David Sissons, Manager, Product Planning

Jacques Coté, General Manager, Marketing and Sales, Atlantic Region

Board of Trade of Metropolitan Toronto:

David Gillelan, President

John Duff, Manager

Bud L. Maheu, CITT, Asst. Manager, International Trade Department

Ed Nazar, CP Rail

Fred Loftin, F.W. Loftin Associates

John Merrylees, Esso Petroleum

Bob Trembly, Robin Hood Multifoods

Don Kohl, Gulf Canada

Lou Warnica

Arthur Wickham, Clarkson Gordon

Charlie Connors, Border Consulting

John Mulholland, Sears

Joseph Laudenback, Shell Canada

Canadian Fruit Wholesalers Association:

Danny Dempster, Executive Vice-President, CFWA

H.J. (Herb) Stroud, National Traffic Manager, CFWA

Stephen Whitney, Assistant to the Executive Vice-President, CFWA

Canadian Industrial Traffic League:

T.J. McTague, C.I.T.T., General Manager

V.A. Cillis, National Transportation Manager, Robin Hood Multifoods Limited

R.T. Beckwith, C.I.T.T., Manager - Customs & Traffic, Combustion Engineering - Superheater Ltd.

Canadian Manufacturers Association:

Ernest McGee, President

Gary K. Gray, Manager, Transportation

Approx: 30 members

A.K. Maclaren, Executive Director, Canadian Trucking Association

M.A. Bleackley, Transportation Coordinator, Canadian Superior Oil Ltd.

John A. Regehr, Manager Transportation, Canterra Energy Ltd.

Eugene H. Nagai, Transportation Analyst, Canterra Energy Ltd.

Council of Forest Industries:

Paul Levelton, Transportation Analyst

David Schmirler, Manager, Transportation Services, MacMillan Bloedel Ltd.

James G. Black, Director Transportation, B.C. Timber

J.D. McMartin, B.C. Forest Products Limited

W.H. Le Grow, Transportation Manager, West Fraser Timber Co. Ltd.

G.L. Rae, Traffic & Marketing Coordinator, Lignum Sales Ltd.

Richard T. Marshall, President, The Coal Association of Canada

Terrance L. Garvey, Director Transportation, Westar Mining Ltd.

Indusmin Limited:

C.M. Woodruff, President and Chief Operating Officer

Rene Lavertu, Senior Vice-President, Minerals Division

Richard Emery, Manager Marketing Services

J. Raymond Levert, Sales Manager, Industrial Minerals

A.G. (Andy) Barker, Traffic Manager

John L. Bonus, Managing Director, The Mining Association of Canada

Mr. R.A. Lipsett, General Traffic Manager, Union Carbide Canada Limited

Andrew Elliott, Manager, Planning, PCS Sales - a subsidiary of the Potash Corporation of Saskatchewan

Martin L. Crilly, President, Western Transportation Advisory Council

Western Grain Elevators Association:

Jack Moore, Cargill Grain Co.

H. Kent Magarrell, Manager, Transportation, Pioneer Grain Company Ltd.

A.J. Klein, Manager, Traffic Department, Country Elevators Division, Saskatchewan Wheat Pool

A.E. (Bert) Berry, Manager, Transportation, United Grain Growers Ltd.

K.J. (Ken) Cooksly, Transportation Administrative Officer, Alberta Wheat Pool

R. Irle, Supervisor, Grain Transportation, Manitoba Pool Elevators

Atlantic Provinces Transportation Commission:

Craig [illegible]. Dickson - General Manager, A.P.T.C.

Ramsay Armitage - Assistant General Manager, A.P.T.C.

Austin S. Durant - Senior Traffic Analyst, A.P.T.C.

New Brunswick Government:

R.D. MacIntosh, Director, Transportation and Communications Policy, Dept. of Transportation, Gov't of N.B.

Gilbert A. Oldham, Sr. Transportation Policy Officer, Dept. of Transportation, Gov't of N.B.

Quebec Government:

Jean-Claude Mercier, le sous-ministre associé aux Terres et Forêts

Pierre L. Charron, Chef - Service Transport Ferroviaire

Sylvio Lalonde, Agent de Recherche

Louis Doyle, Agent de Recherche

Jean Boulet, Chef de la Concertation

Ontario Ministry of Transportation and Communications:

Rod B. Taylor, Head Distribution Systems Group

Peter Skorochod, Head Transportation Pricing Group

F. D'Onofrio, Assistant Transportation Officer

Dave Searle, Legal Services

Manitoba Dept. of Highways & Transportation:

Honourable John S. Plohman

Dennis A. Schaefer, Manager, Freight Policy Branch

Michael Creft, Freight Policy Branch

Alberta Government: (Economic Development; Transportation Services Branch)

Wilfried A. Danzinger, Executive Director

J.R. Soulsby, Senior Director, Freight Transportation Services

C.M. Rosko, Director, Pricing Analysis

Dan Rice, Economist

Neil Petrovitch, Acting Executive Director, Transportation Agency of Saskatchewan

W.J. Morrison, Manager, Freight Pricing, Alcan Smelters and Chemicals Ltd.

Canadian Chemical Producers Association:

J.S. (Sheeraz) Khan, Manager, Marketing Services, Esso Chemical Canada

J.S. Handyside, Traffic Manager, Dow Chemical Canada Inc.

A.A. (Alf) Jensen, Supervisor, Distribution, Petrosar Ltd.

D.S. (Don) Sandford, Corporate Traffic Manager, C-I-L Inc.

David W. Goffin, Technical Advisor, The Canadian Chemical Producers' Association

Canadian Pulp and Paper Association:

T.J. Openshaw, Manager, Transportation and Distribution Section

J.R. McColm, Chairman, Distribution Section

J.A. Powell, Vice-Chairman, Distribution Section

M.E. Rothstein, Legal Counsel

J.E. Foran, Legal Counsel

K.A. MacKenzie, Director of Transportation, Department of Transportation and Public Works, P.E.I. Provincial Government

Joel R. Neal, Assistant Director, Canadian Fertilizer Institute

Province of British Columbia:

Donald A. Kasianchuk, Assistant Deputy Minister, Minister of Transportation and Highways

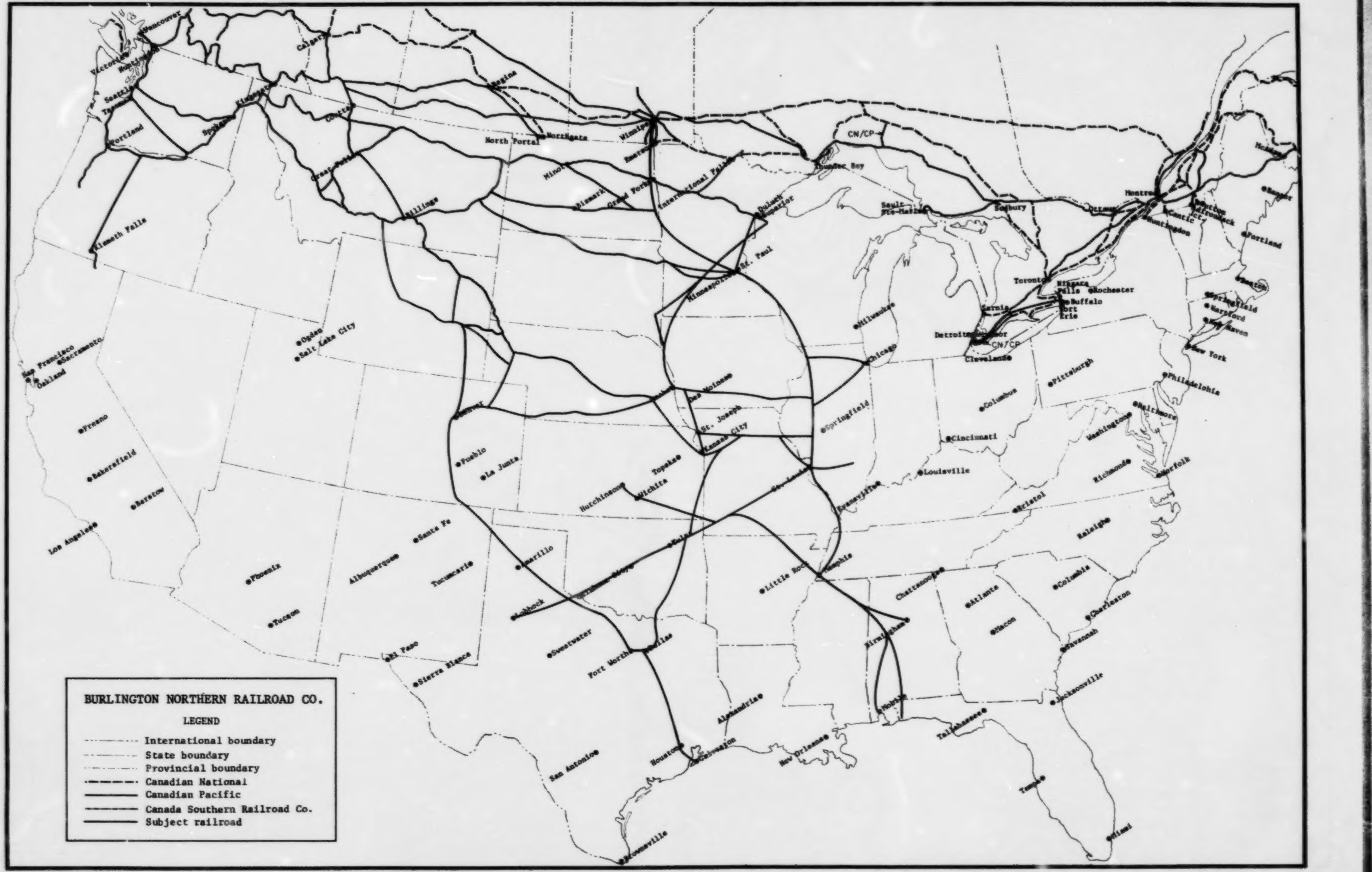
George A. Clark, Director, Transport Policy Analysis

Roy D. Cowley, Manager, Rail Policy

W.P. (Bill) Warburton, Transport Analyst

United States Class I Freight Carrying Railroad Companies

Burlington Northern .R. Co.
Chicago and North Western Trans. Co.
Consolidated Rail Corp.
CSX Corporation
Denver and Rio Grande Western
Grand Trunk Corp.
Guilford Transportation Ind., Inc.
Illinois Central Gulf
Kansas City Southern
Milwaukee Road, The
Missouri-Kansas-Texas
Norfolk Southern Corp.
Santa Fe Industries Inc.
Soo Line Railraod Co.
Southern Pacific Trans. Co.
Union Pacific Corp.



BURLINGTON NORTHERN RAILROAD CO.

LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Klamath Falls
Regina
North Portal
Northgate
Winnipeg
Emerson
Minot
Bismark
Grand Forks
International Falls
Duluth
Superior
Thunder Bay
CN/CP
Sault Ste-Marie
Sudbury
Ottawa
Montreal
Huntingdon
Coaticook
Bangor
Portland
St. Paul
Minneapolis
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Sarnia
Detroit
Windsor
CN/CP
Cleveland
Milwaukee
Chicago
Boston
Springfield
Hartford
New Haven
New York
Philadelphia
Baltimore
Washington
Pittsburgh
Columbus
Cincinnati
Louisville
Richmond
Norfolk
Bristol
Raleigh
San Francisco
Oakland
Sacramento
Ogden
Salt Lake City
Fresno
Bakersfield
Barstow
Los Angeles
Denver
Pueblo
La Junta
Des Moines
St. Joseph
Kansas City
Springfield
Topeka
Hutchinson
Wichita
St. Louis
Evansville
Tulsa
Santa Fe
Albuquerque
Tucumcari
Amarillo
Phoenix
Tucson
El Paso
Sierra Blanca
Lubbock
Oklahoma City
Sweetwater
Fort Worth
Dallas
Little Rock
Memphis
Chattanooga
Atlanta
Columbia
Charleston
Macon
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Alexandria
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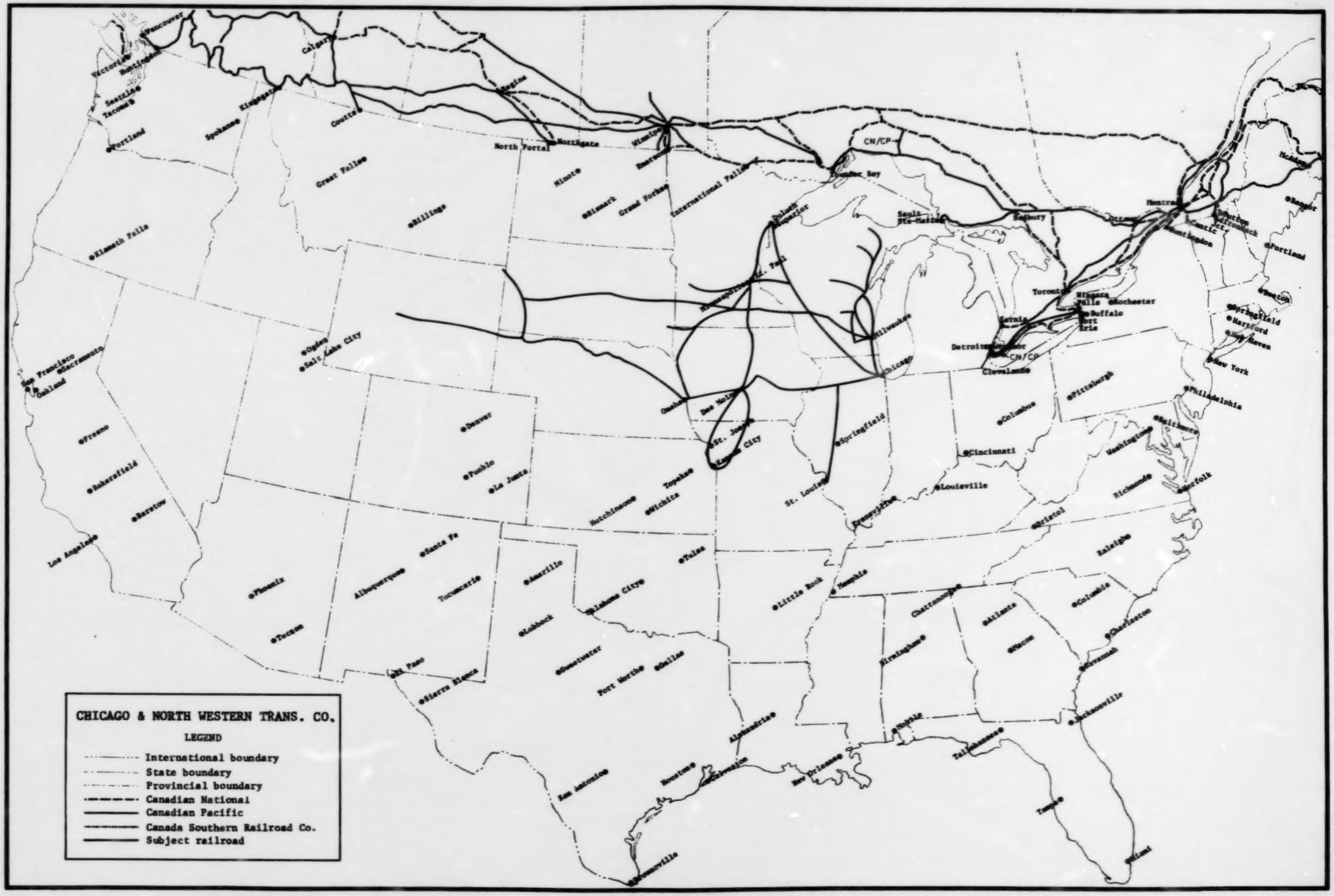
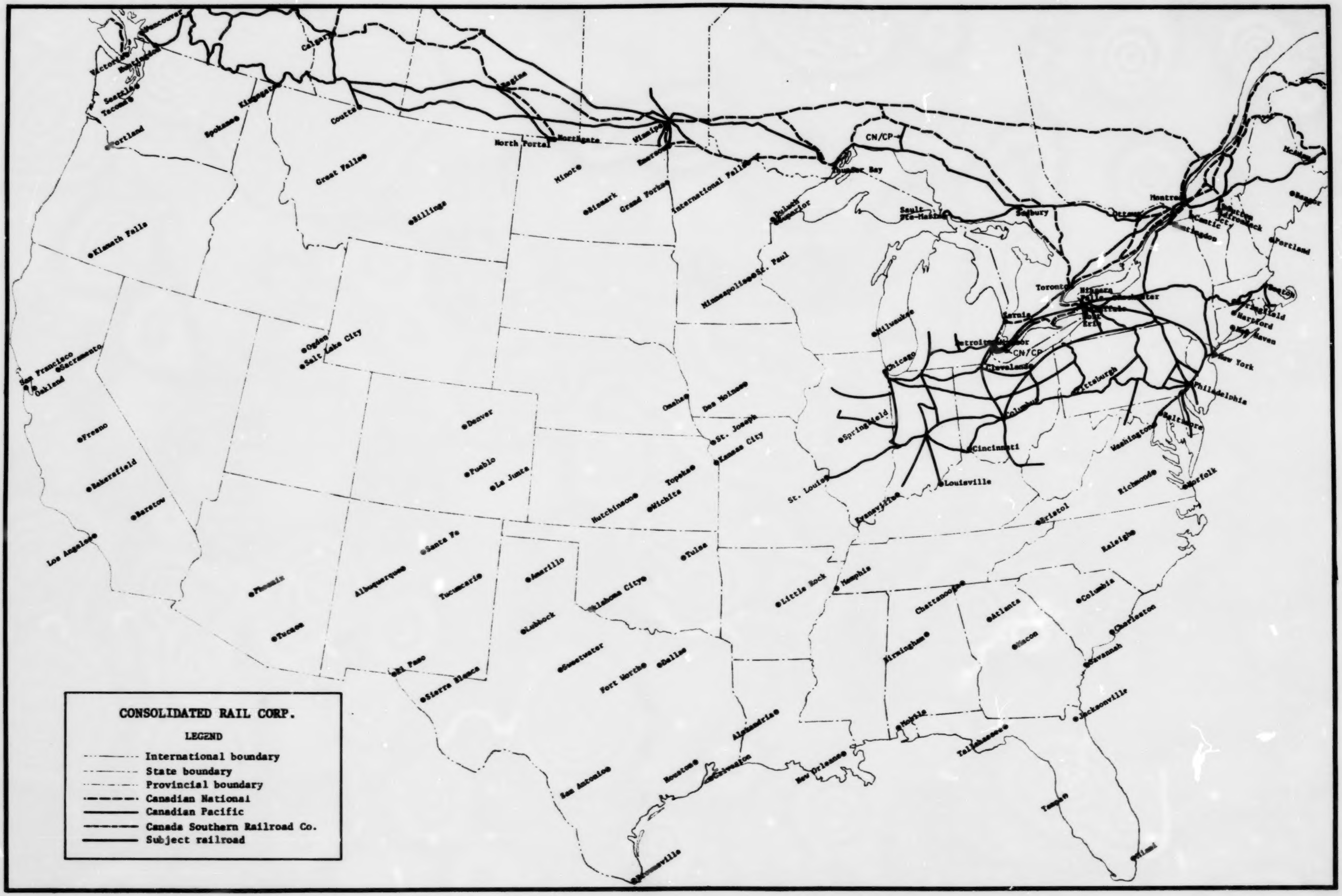
Galveston
San Antonio
Brownsville
Tampa
Miami



CHICAGO & NORTH WESTERN TRANS. CO.

LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Regina
North Portal
Northgate
Minot
Winnipeg
Emerson
Bismark
Grand Forks
International Falls
CN/CP
Thunder Bay
Duluth
Superior
Sault Ste-Marie
Sudbury
Ottawa
Montreal
Sherbrooke
Coaticook
Portland
Bangor
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Sarnia
Detroit
CN/CP
Cleveland
Minneapolis
St. Paul
Milwaukee
Chicago
Billings
Klamath Falls
Ogden
Salt Lake City
San Francisco
Sacramento
Oakland
Fresno
Bakersfield
Barstow
Los Angeles
Denver
Pueblo
La Junta
Omaha
Des Moines
St. Joseph
Kansas City
Springfield
St. Louis
Topeka
Hutchinson
Wichita
Evansville
Louisville
Cincinnati
Columbus
Pittsburgh
Philadelphia
New York
New Haven
Hartford
Springfield
Boston
Baltimore
Washington
Richmond
Norfolk
Bristol
Raleigh
Santa Fe
Albuquerque
Tucumcarie
Phoenix
Tucson
El Paso
Sierra Blanca
Amarillo
Lubbock
Sweetwater
Oklahoma City
Tulsa
Fort Worth
Dallas
Little Rock
Memphis
Chattanooga
Atlanta
Columbia
Charleston
Macon
Savannah
Jacksonville
Birmingham
Mobile
Tallahassee
Tampa
Miami
New Orleans
Alexandria
Houston
Galveston
San Antonio
Brownsville



CONSOLIDATED RAIL CORP.

LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Kingsgate
Calgary
Coutts
Regina
North Portal
Northgate
Winnipeg
Emerson
Portland
Spokane
Great Falls
Billings
Minot
Bismark
Grand Forks
International Falls
CN/CP
Thunder Bay
Duluth
Superior
Sault Ste-Marie
Sudbury
Ottawa
Montreal
Coteau
Lantic
Huntingdon
Rouses Point
Bangor
Portland
Klamath Falls
Minneapolis
St. Paul
Toronto
Niagara Falls
Rochester
Buffalo
Erie
Sarnia
Detroit
Windsor
CN/CP
Milwaukee
Chicago
Cleveland
Pittsburgh
Boston
Springfield
Hartford
New Haven
New York
Philadelphia
Baltimore
Washington
Columbus
Cincinnati
Louisville
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St. Louis
Evansville
Ogden
Salt Lake City
San Francisco
Oakland
Sacramento
Fresno
Bakersfield
Barstow
Los Angeles
Denver
Pueblo
La Junta
Omaha
Des Moines
St. Joseph
Kansas City
Topeka
Hutchinson
Wichita
Bristol
Richmond
Norfolk
Raleigh
Santa Fe
Albuquerque
Tucumcari
Amarillo
Tulsa
Oklahoma City
Little Rock
Memphis
Phoenix
Tucson
Lubbock
El Paso
Sierra Blanca
Sweetwater
Fort Worth
Dallas
Chattanooga
Atlanta
Columbia
Charleston
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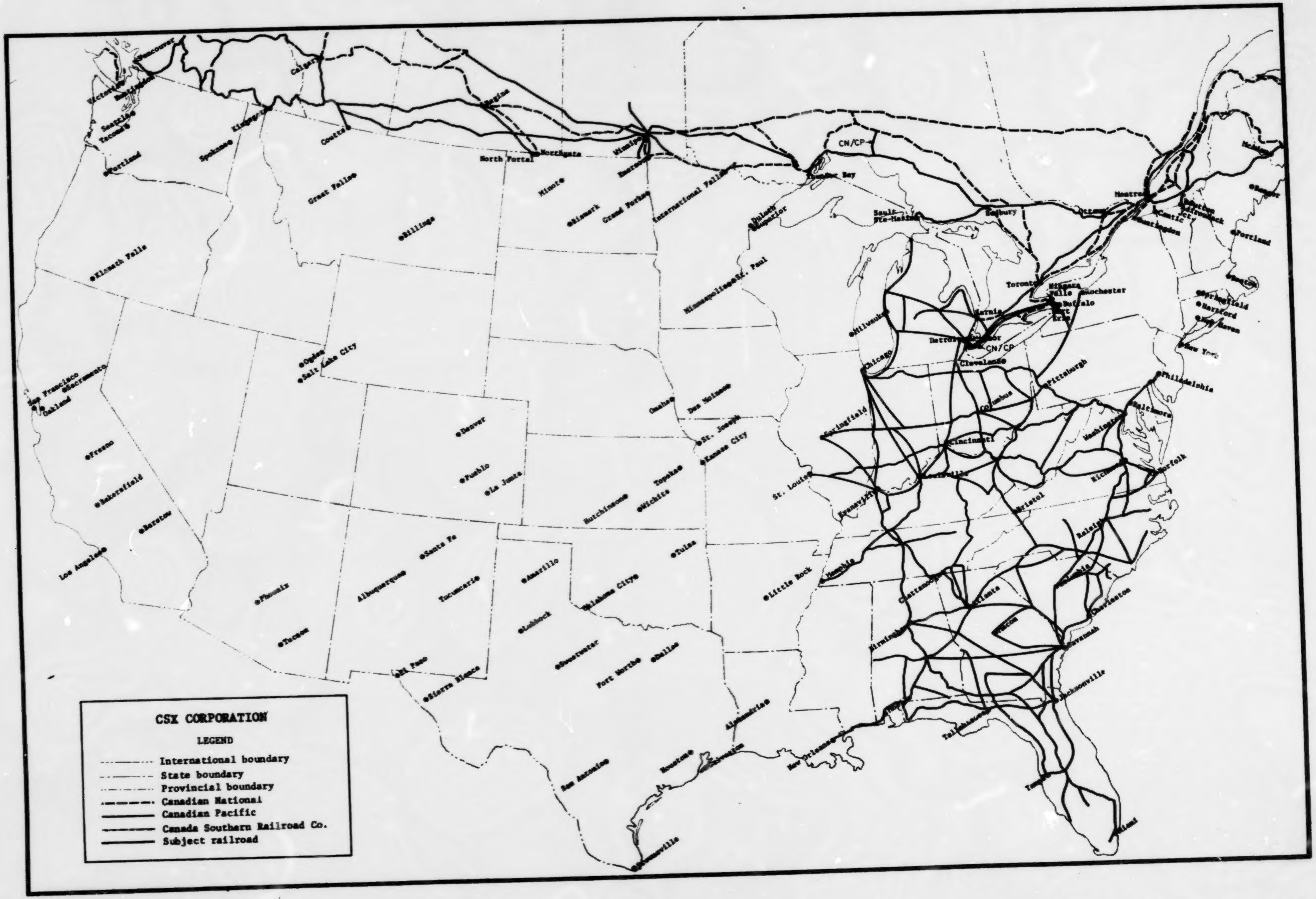
Tampa
Miami


CSX CORPORATION
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Regina
North Portal
Northgate
Minot
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International Falls
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Sierra Blanca
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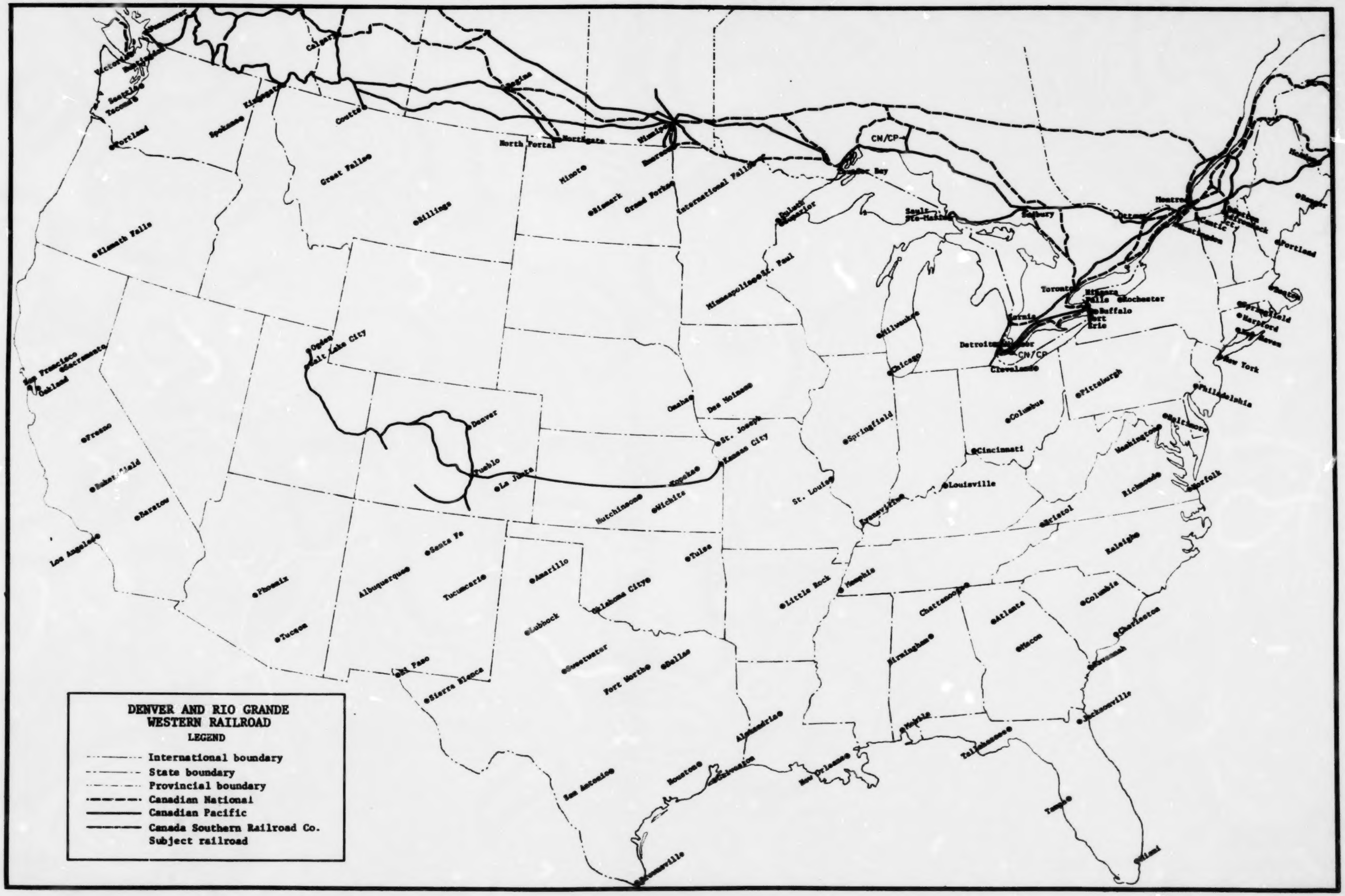
DENVER AND RIO GRANDE
WESTERN RAILROAD
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Seattle
Tacoma
Calgary
Regina
Kingsgate
Spokane
Coutts
Portland
North Portal
Northgate
Winnipeg
Emerson
CN/CP
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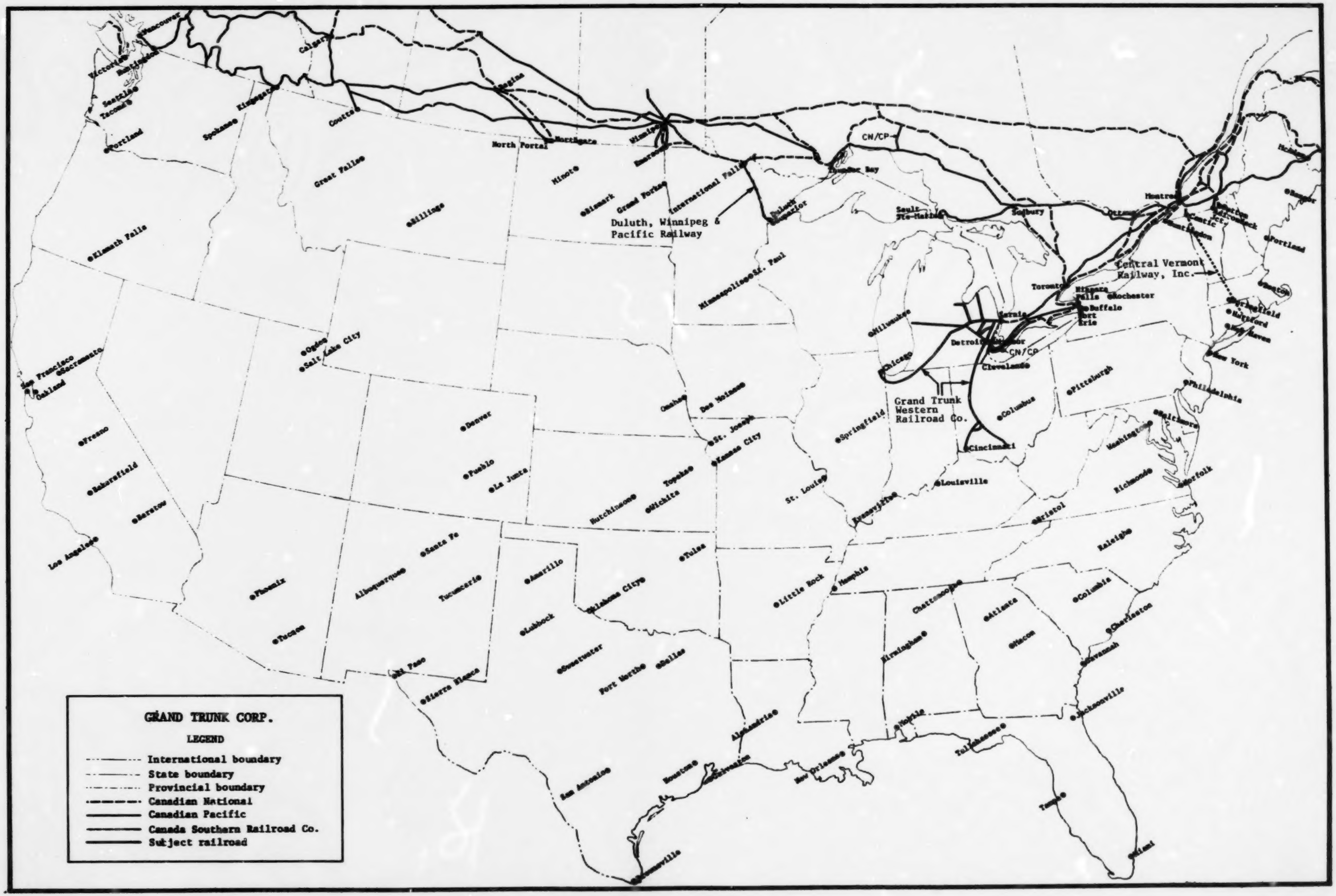
GRAND TRUNK CORP.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Duluth, Winnipeg & Pacific Railway
Grand Trunk Western Railroad Co.
Central Vermont Railway, Inc.
CN/CP
CN/CP
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Regina
North Portal
Portal
Winnipeg
Emerson
Minot
Bismark
Grand Forks
International Falls
Duluth
Superior
Thunder Bay
Sault Ste-Marie
Sudbury
Ottawa
Montreal
Sherbrooke
Island Pond
Bangor
Portland
Boston
Springfield
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New Haven
New York
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Sarnia
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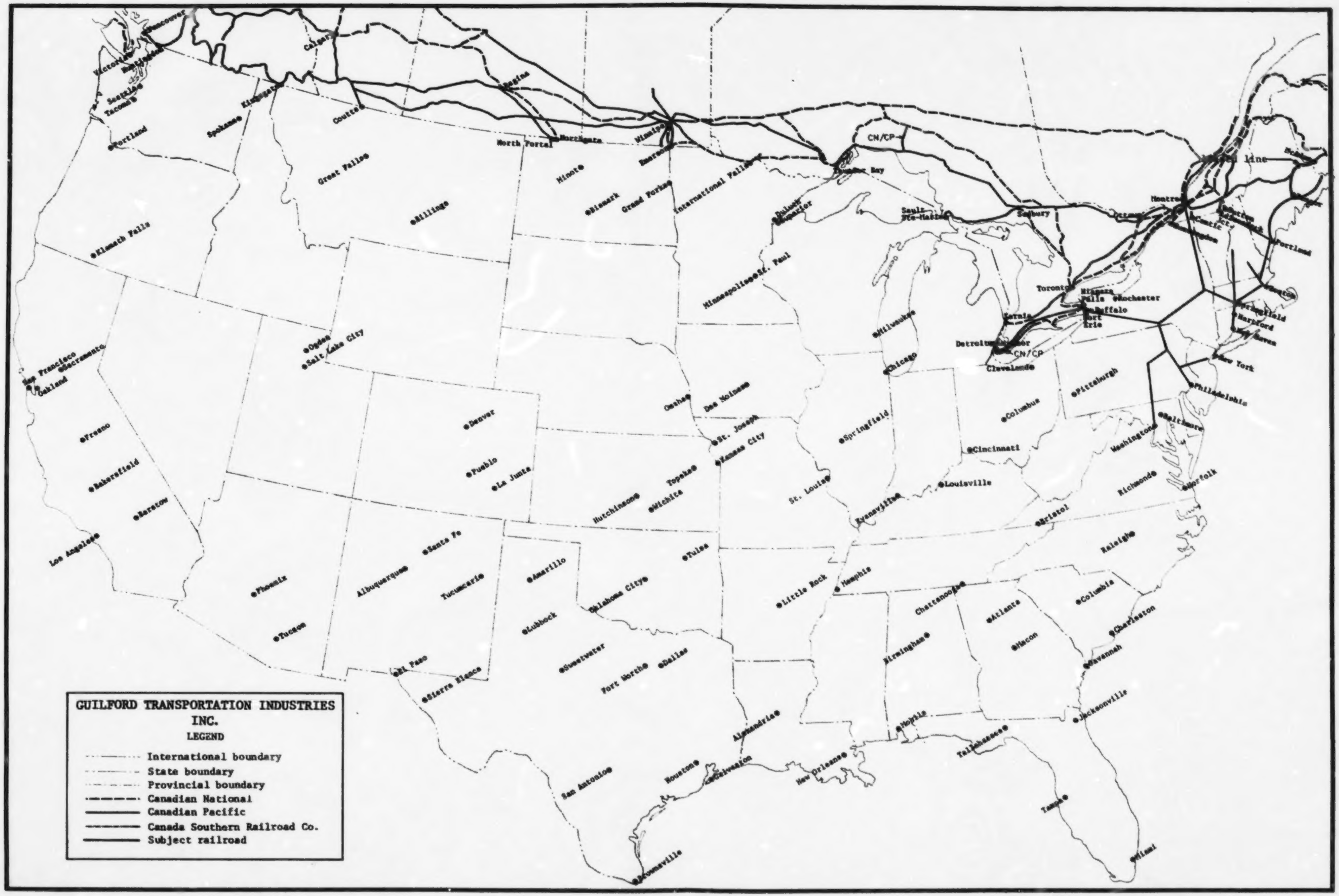
GUILFORD TRANSPORTATION INDUSTRIES INC.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Seattle
Tacoma
Calgary
Kingsgate
Spokane
Portland
Coutts
Regina
North Portal
Northgate
Winnipeg
Emerson
Minot
Bismark
Grand Forks
International Falls
Great Falls
Billings
Klamath Falls
CN/CP
Thunder Bay
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Superior
Sault Ste-Marie
Sudbury
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St. Paul
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
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Windsor
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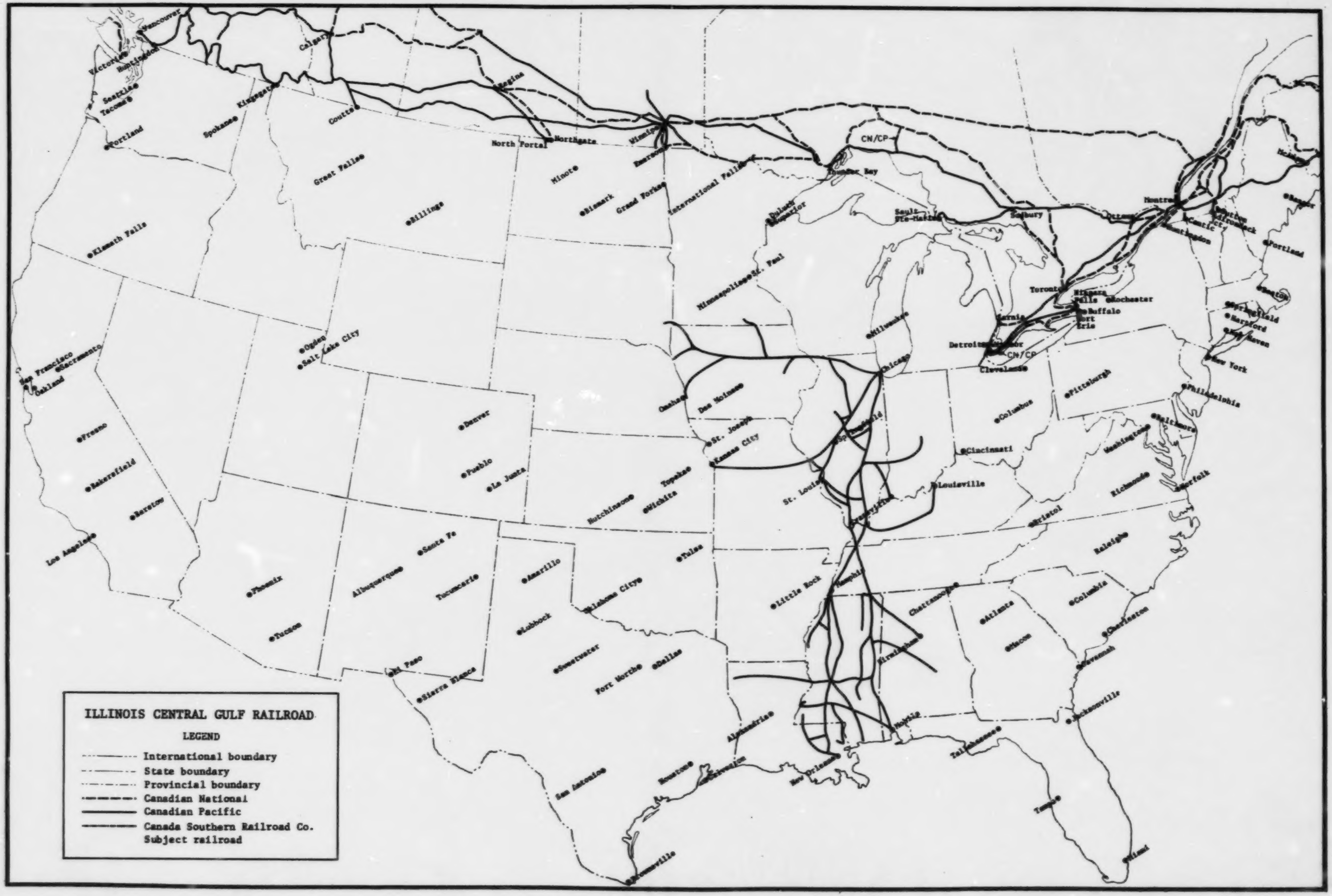

ILLINOIS CENTRAL GULF RAILROAD

LEGEND

International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Regina
North Portal
Northgate
Winnipeg
Emerson
Great Falls
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Bangor
Portland
Klamath Falls
Minneapolis
St. Paul
Milwaukee
Toronto
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Rochester
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Windsor
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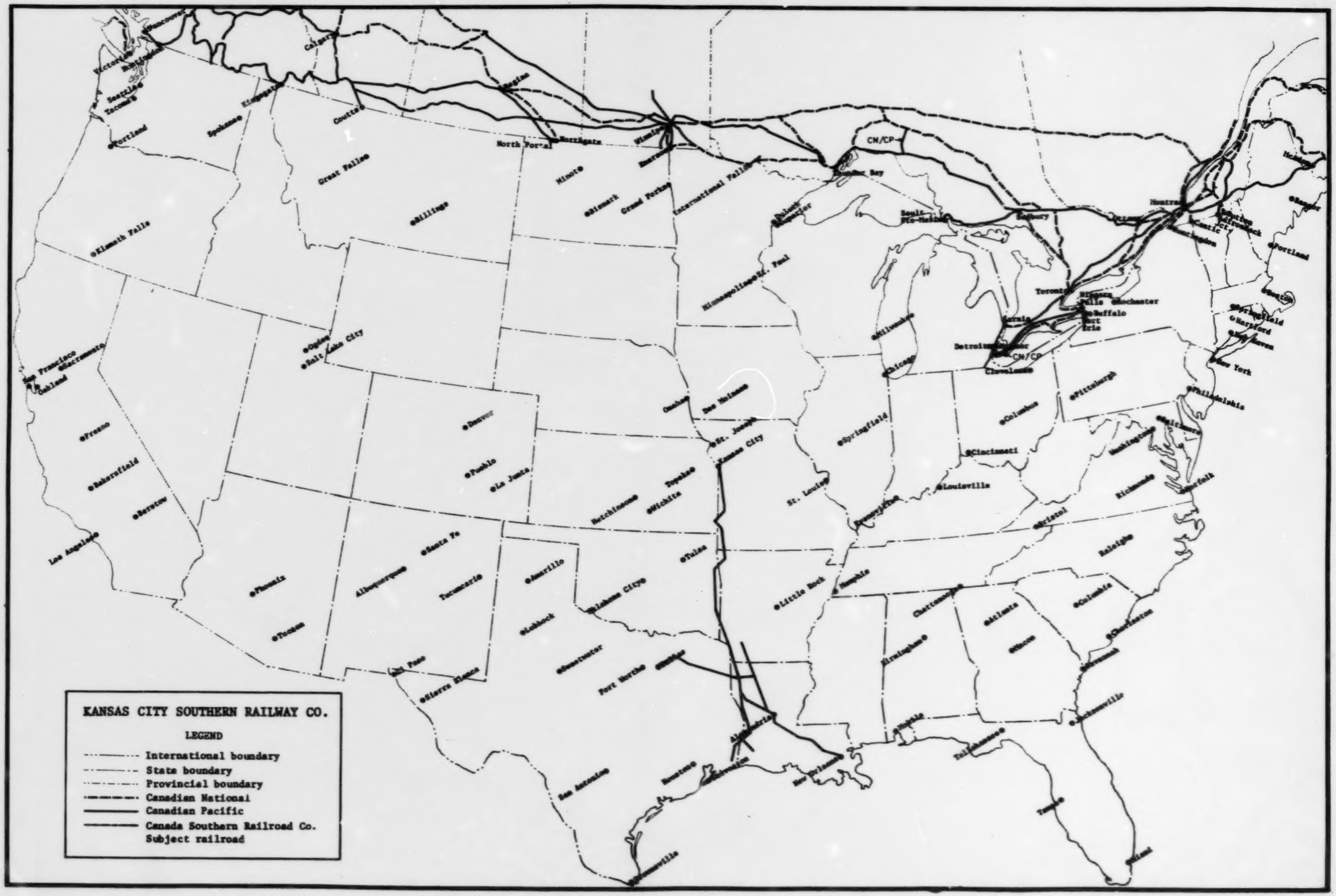
KANSAS CITY SOUTHERN RAILWAY CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Regina
North Portal
Portal
Minot
Bismarck
Grand Forks
Winnipeg
Emerson
International Falls
Thunder Bay
CN/CP
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Superior
Sault Ste. Marie
Sudbury
Ottawa
Montreal
Minneapolis
St. Paul
Milwaukee
Chicago
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Sarnia
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Springfield
Hartford
New Haven
New York
Klamath Falls
San Francisco
Sacramento
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Bakersfield
Barstow
Los Angeles
Ogden
Salt Lake City
Denver
Pueblo
La Junta
Phoenix
Tucson
Albuquerque
Santa Fe
Tucumcari
El Paso
Sierra Blanca
Amarillo
Lubbock
Sweetwater
Fort Worth
Dallas
Oklahoma City
Tulsa
Hutchinson
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Kansas City
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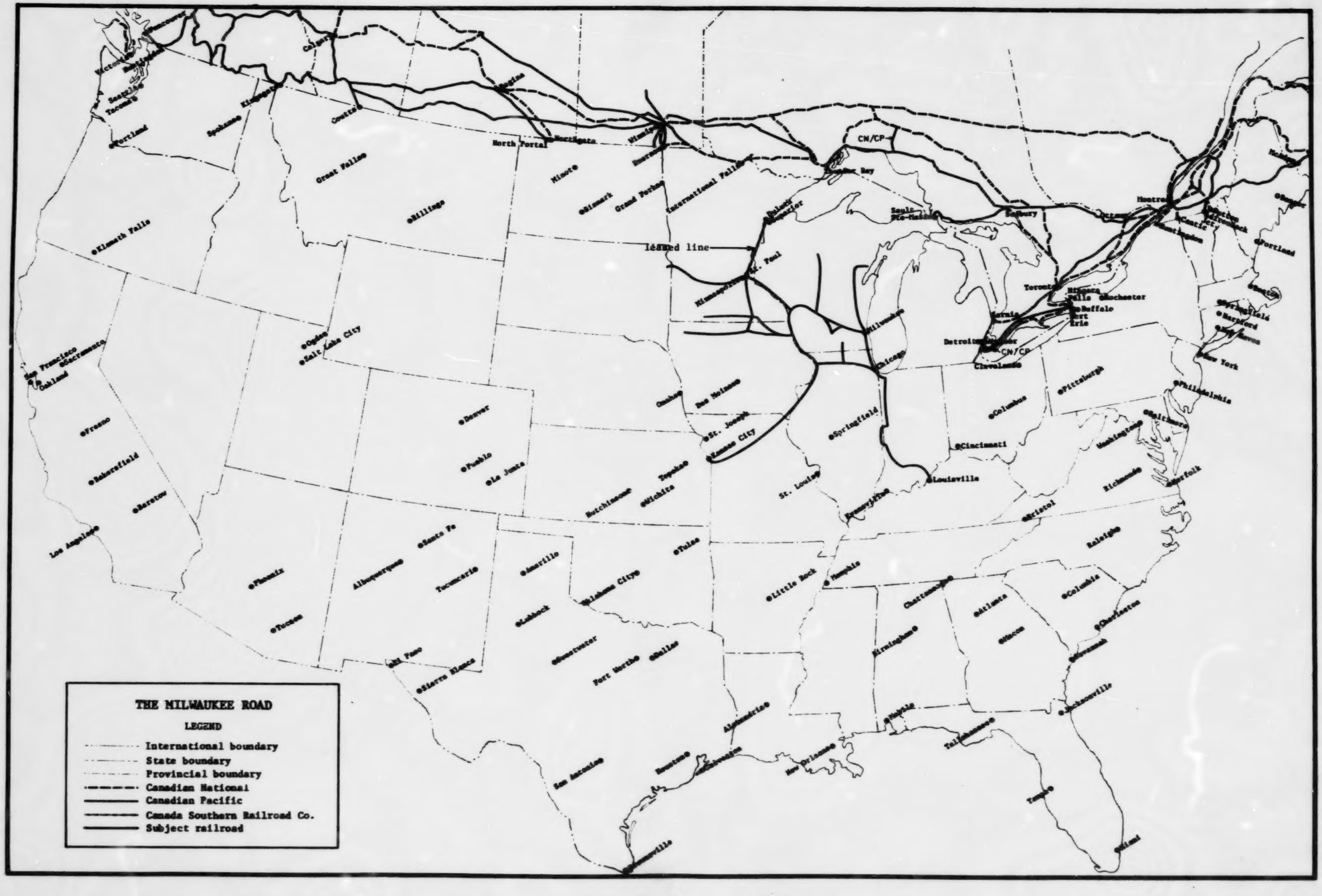
Tampa
Miami


THE MILWAUKEE ROAD
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Regina
North Portal
Northgate
Winnipeg
Emerson
Great Falls
Billings
Minot
Bismarck
Grand Forks
International Falls
Duluth
Superior
leased line
St. Paul
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Thunder Bay
Sault Ste-Marie
Sudbury
Ottawa
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Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Sarnia
Detroit
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Klamath Falls
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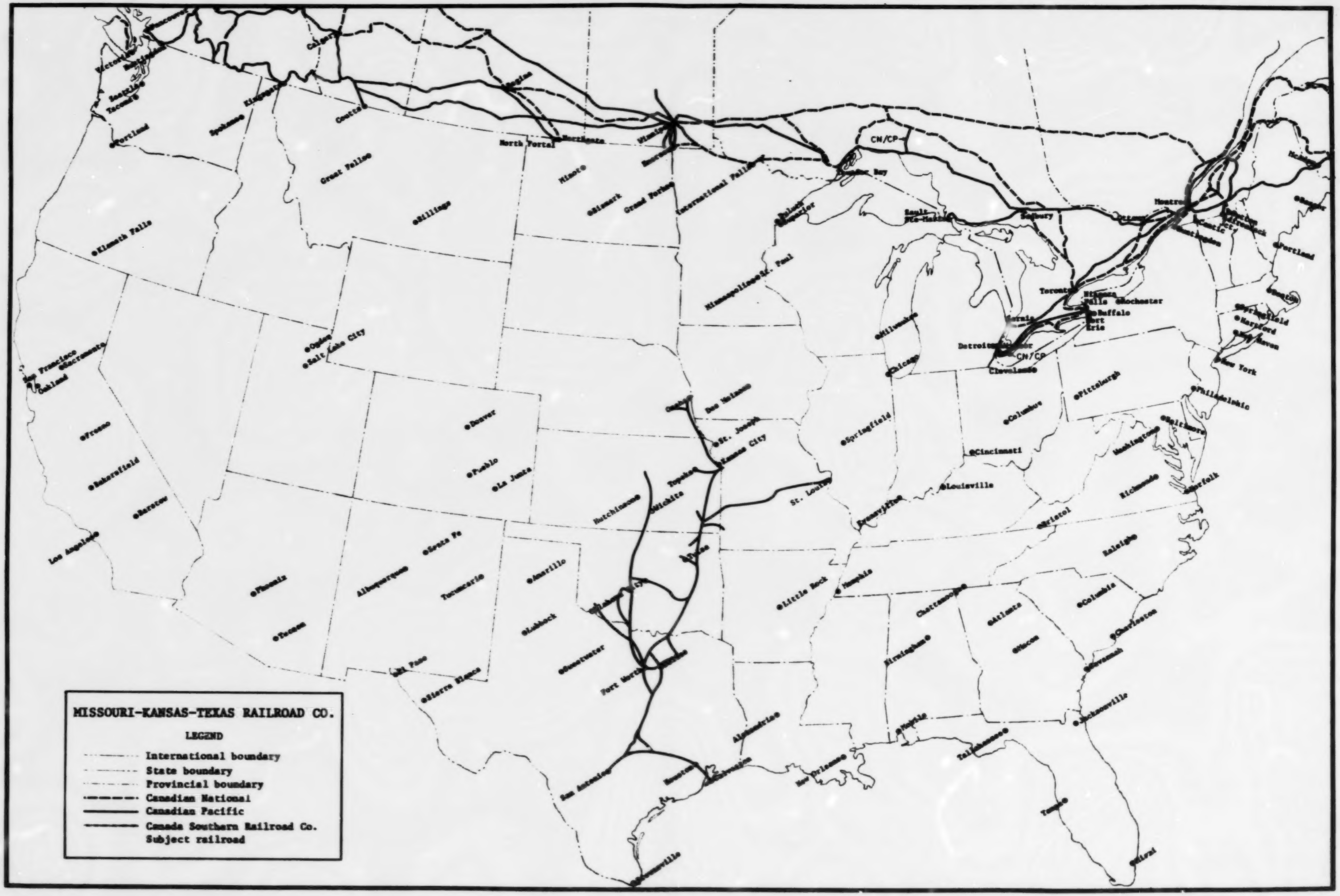
MISSOURI-KANSAS-TEXAS RAILROAD CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
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Victoria
Seattle
Tacoma
Calgary
Kingsgate
Coutts
Regina
North Portal
Northgate
Winnipeg
Emerson
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Thunder Bay
Sault Ste-Marie
Sudbury
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Portland
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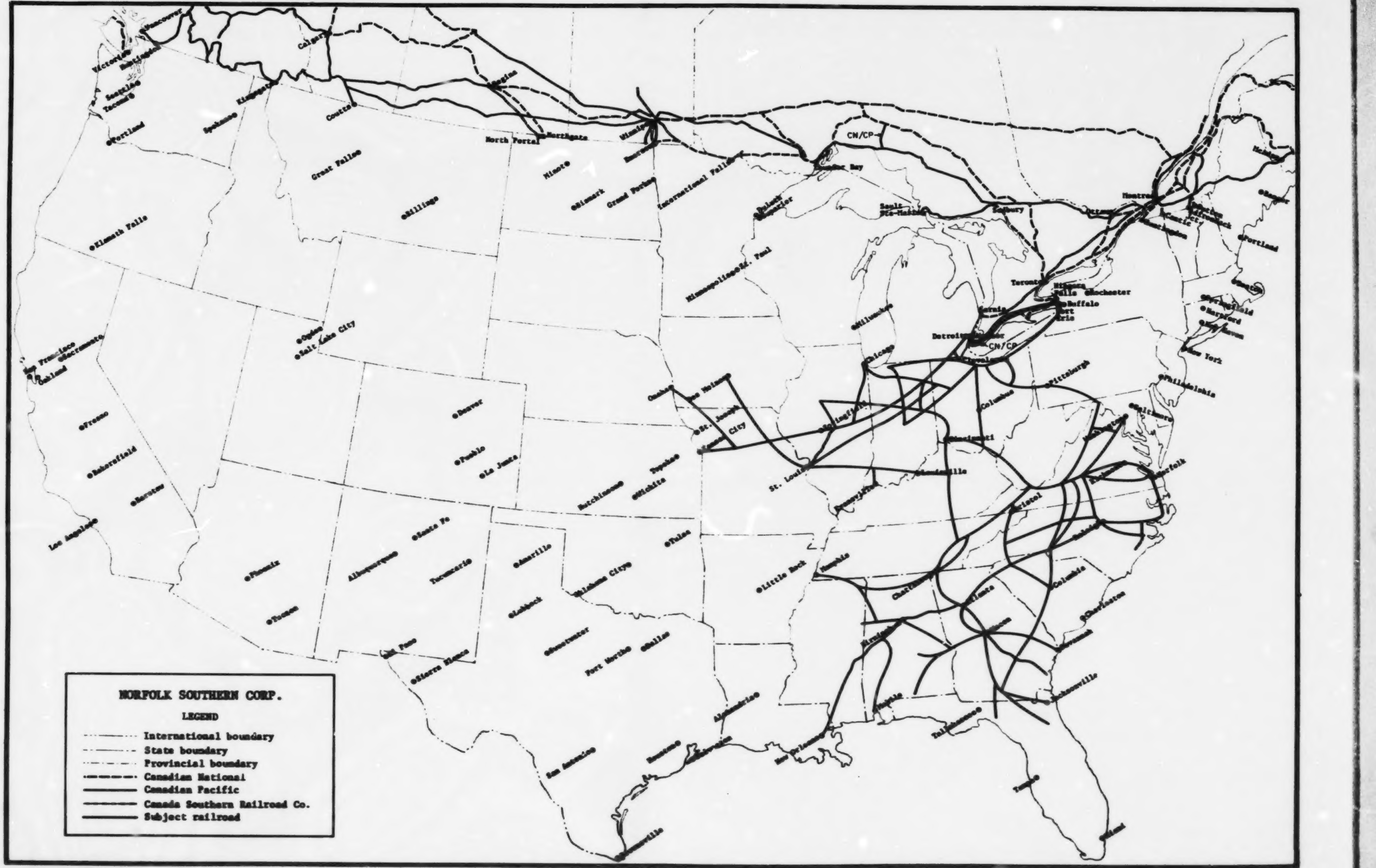
NORFOLK SOUTHERN CORP.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
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Tacoma
Kingsgate
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Calgary
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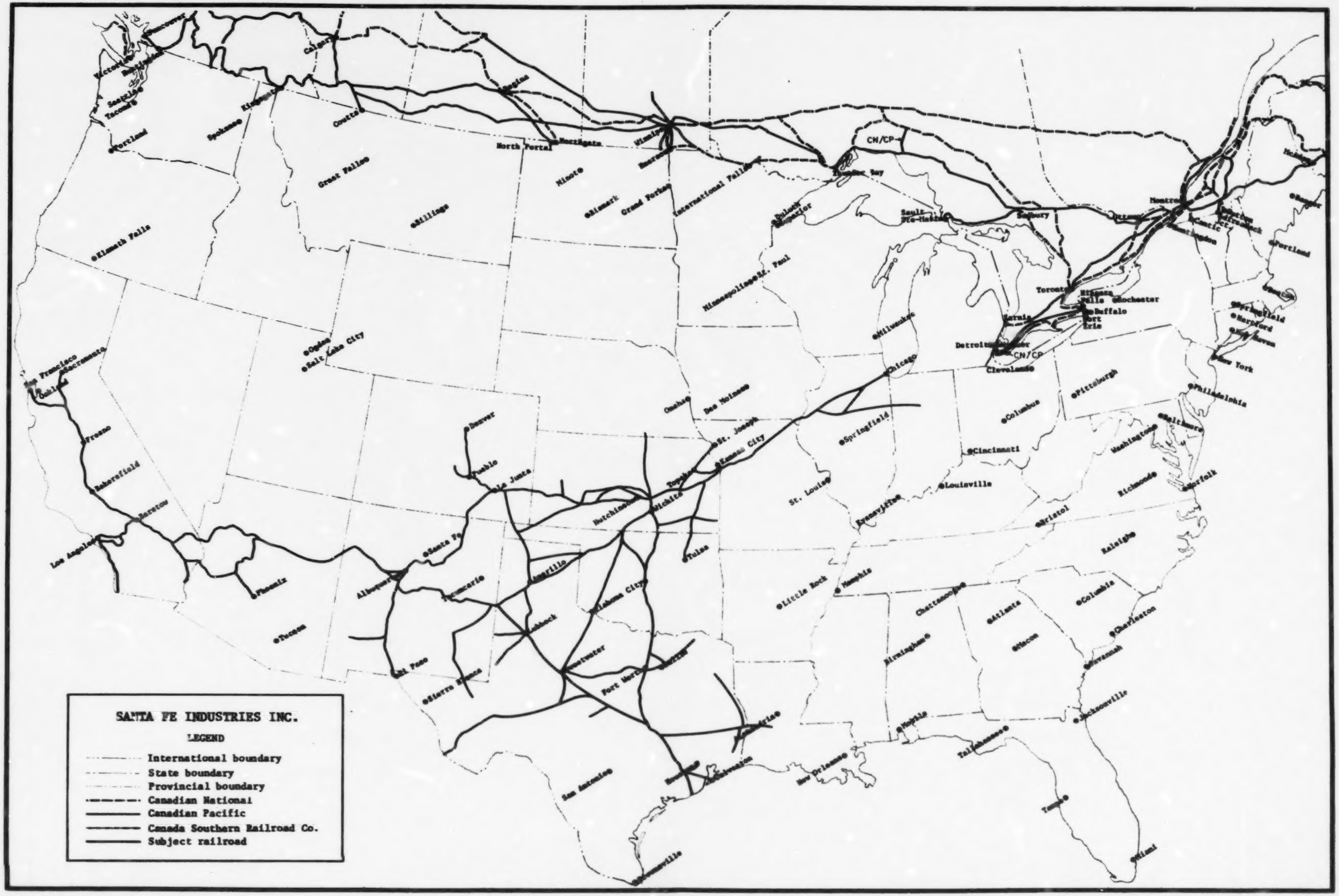
SANTA FE INDUSTRIES INC.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Calgary
Regina
Coutts
Kingsgate
Seattle
Tacoma
Portland
Spokane
North Portal
Northgate
Winnipeg
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Minot
Great Falls
Billings
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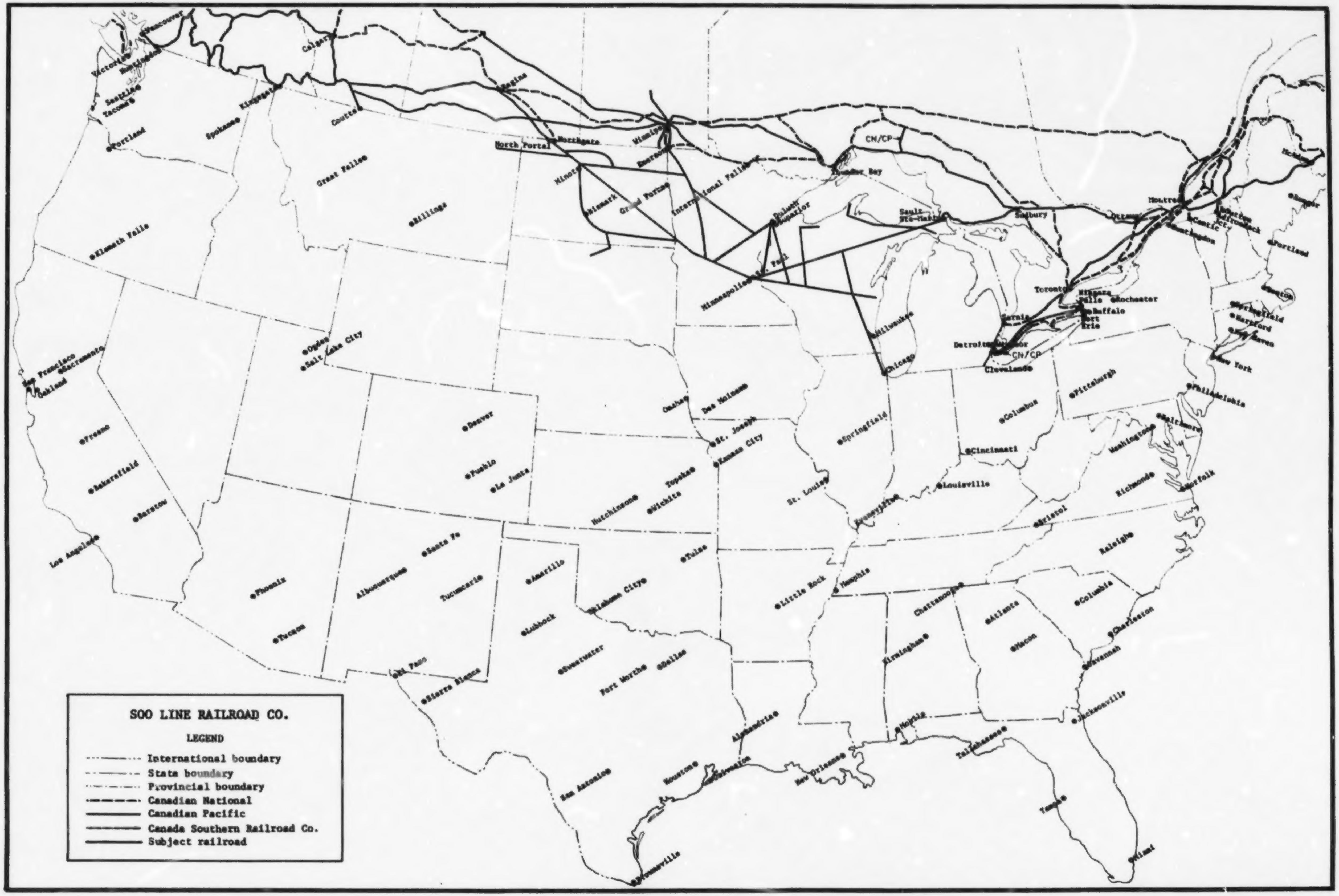
SOO LINE RAILROAD CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
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Seattle
Tacoma
Portland
Spokane
Kingsgate
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Great Falls
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Adirondack Jct.
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Amarillo
Oklahoma City
Tulsa
Phoenix
Tucson
El Paso
Sierra Blanca
Lubbock
Sweetwater
Fort Worth
Dallas
Little Rock
Memphis
Chattanooga
Birmingham
Atlanta
Macon
Columbia
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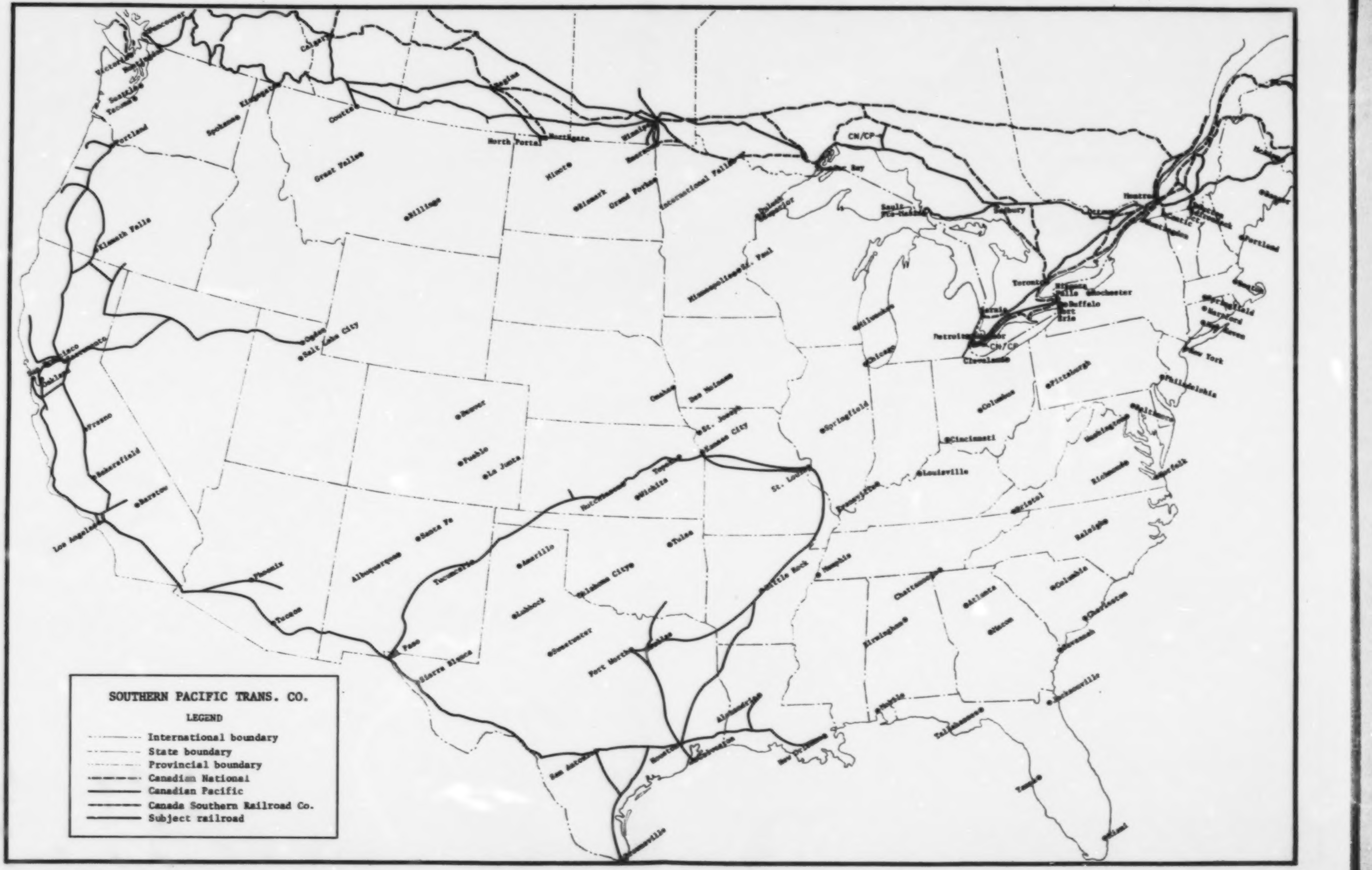
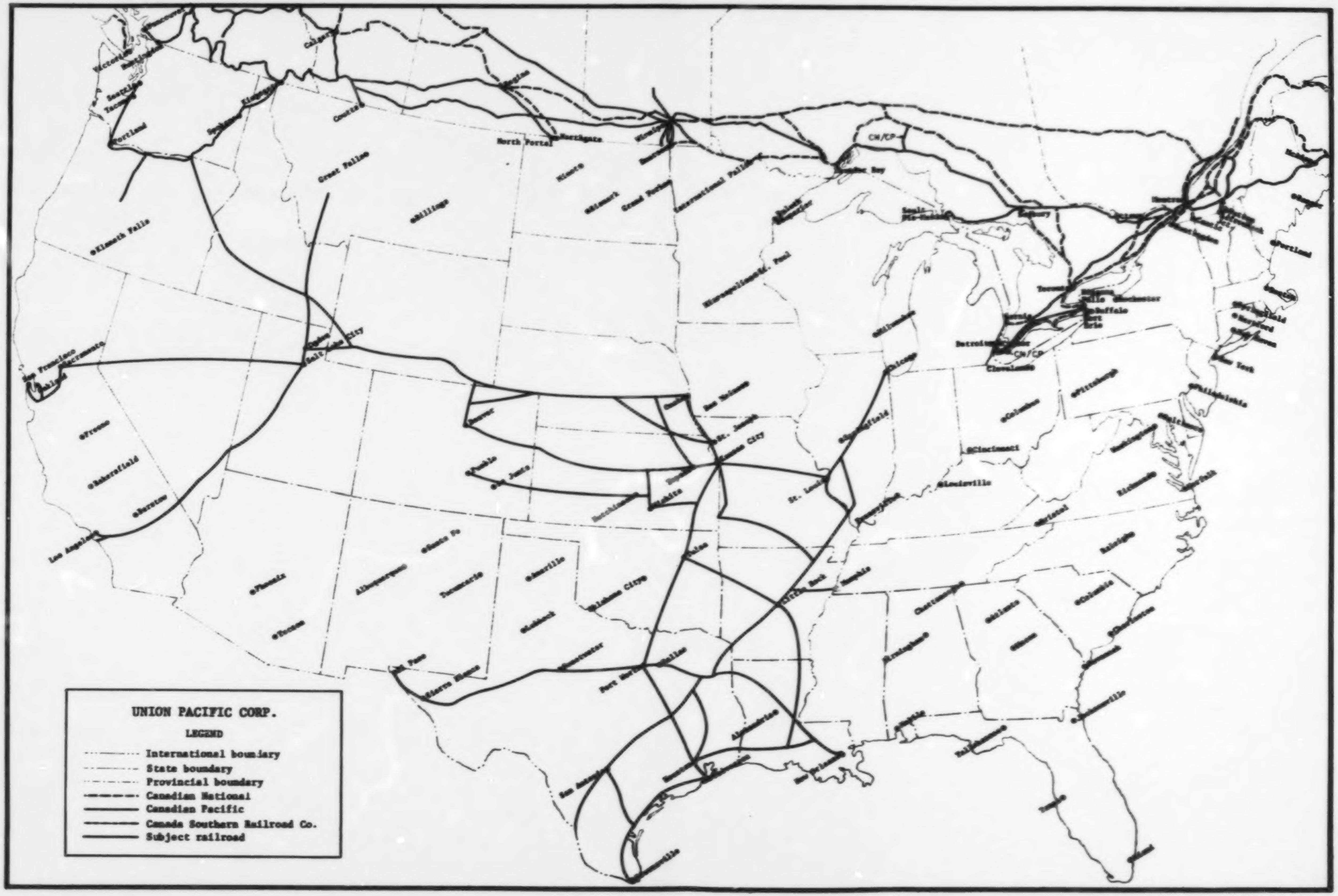
Savannah
Jacksonville
Alexandria
Houston
Galveston
San Antonio
New Orleans
Mobile
Tallahassee
Tampa
Miami
Brownsville


SOUTHERN PACIFIC TRANS. CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Seattle
Tacoma
Calgary
Regina
Kingsgate
Spokane
Coutts
North Portal
Portland
Great Falls
Minot
Bismarck
Grand Forks
Emerson
International Falls
Thunder Bay
CN/CP
Billings
Klamath Falls
Duluth
Superior
Sault Ste. Marie
Sudbury
Montreal
Portland
Minneapolis
St. Paul
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Sarnia
Detroit
Windsor
CN/CP
Cleveland
Milwaukee
Chicago
Springfield
Hartford
New Haven
New York
Philadelphia
Pittsburgh
Baltimore
Washington
Ogden
Salt Lake City
Sacramento
San Francisco
Oakland
Fresno
Bakersfield
Barstow
Los Angeles
Omaha
Des Moines
St. Joseph
Kansas City
Denver
Pueblo
La Junta
Topeka
Hutchinson
Wichita
St. Louis
Evansville
Louisville
Cincinnati
Columbus
Richmond
Norfolk
Bristol
Raleigh
Santa Fe
Albuquerque
Tucumcari
Amarillo
Tulsa
Oklahoma City
Little Rock
Memphis
Chattanooga
Atlanta
Columbia
Charleston
Macon
Savannah
Birmingham
Phoenix
Tucson
El Paso
Sierra Blanca
Lubbock
Sweetwater
Fort Worth
Dallas
Alexandria
Houston
Galveston
San Antonio
New Orleans
Mobile
Tallahassee
Jacksonville
Tampa
Miami
Brownsville


UNION PACIFIC CORP.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Regina
North Portal
Northgate
Winnipeg
Emerson
Minot
Bismark
Grand Forks
International Falls
Thunder Bay
CN/CP
Duluth
Superior
Sault Ste. Marie
Sudbury
Montreal
Ottawa
Portland
Klamath Falls
Billings
Minneapolis-St. Paul
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Detroit
Windsor
CN/CP
Cleveland
Springfield
Hartford
New Haven
New York
Milwaukee
Chicago
Ogden
Salt Lake City
San Francisco
Sacramento
Oakland
Fresno
Bakersfield
Barstow
Los Angeles
Denver
Pueblo
La Junta
Omaha
Des Moines
St. Joseph
Kansas City
Topeka
Wichita
Hutchinson
Springfield
St. Louis
Pittsburgh
Philadelphia
Columbus
Cincinnati
Louisville
Baltimore
Washington
Richmond
Norfolk
Bristol
Raleigh
Santa Fe
Albuquerque
Tucumcari
Amarillo
Phoenix
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Tulsa
Little Rock
Memphis
Chattanooga
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Lubbock
Birmingham
Macon
Savannah
Jacksonville
El Paso
Sierra Blanca
Sweetwater
Fort Worth
Dallas
Alexandria
San Antonio
Houston
Galveston
New Orleans
Mobile
Tallahassee
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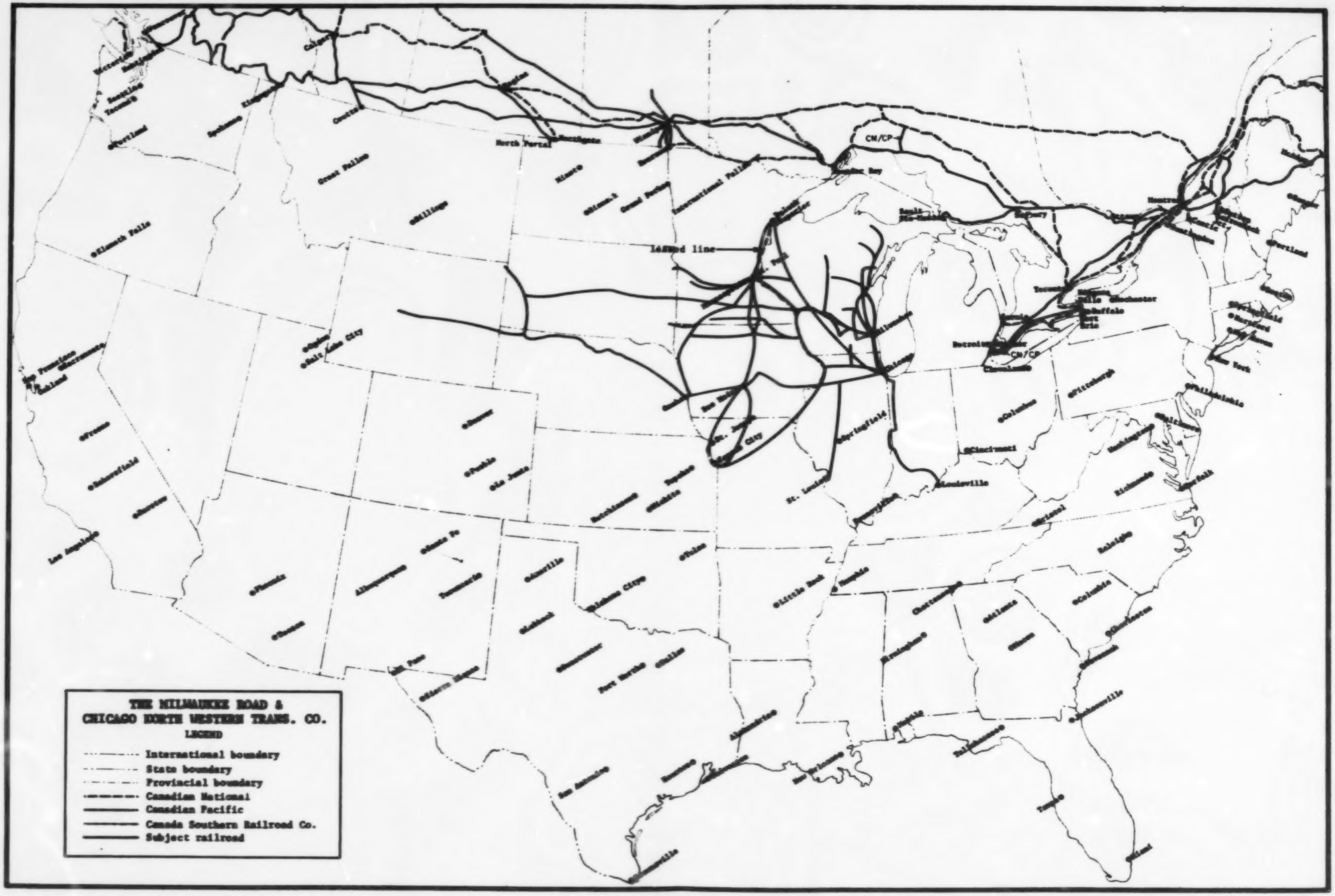
Miami
Brownsville

Rail Networks Possibly Resulting from Mergers

Chicago & North Western-Milwaukee Road
Grand Trunk Corporation-Milwaukee Road
Soo Line-Milwaukee Road
Santa Fe Industries-Southern Pacific


THE MILWAUKEE ROAD &
CHICAGO NORTH WESTERN TRANS. CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
leased line
CN/CP
CN/CP
North Portal
Great Falls
Billings
Portland
Klamath Falls
Salt Lake City
Fresno
Los Angeles
Denver
Pueblo
Albuquerque
Amarillo
Tulsa
Little Rock
San Antonio
Fort Worth
Dallas
Houston
New Orleans
Jacksonville
Tampa
Tallahassee
Savannah
Charleston
Columbia
Atlanta
Macon
Birmingham
Chattanooga
Raleigh
Richmond
Norfolk
Washington
Baltimore
Philadelphia
New York
Pittsburgh
Columbus
Cincinnati
Louisville
Springfield
St. Louis
Chicago
Milwaukee
Detroit
Cleveland
Toronto
Buffalo
Rochester
Erie
Montreal
Sudbury
Sault Ste. Marie
Portland
Boston
International Falls
Grand Forks
Minot
El Paso
Phoenix
Tucson
Santa Fe
Wichita
Topeka
Hutchinson
Sacramento
San Francisco
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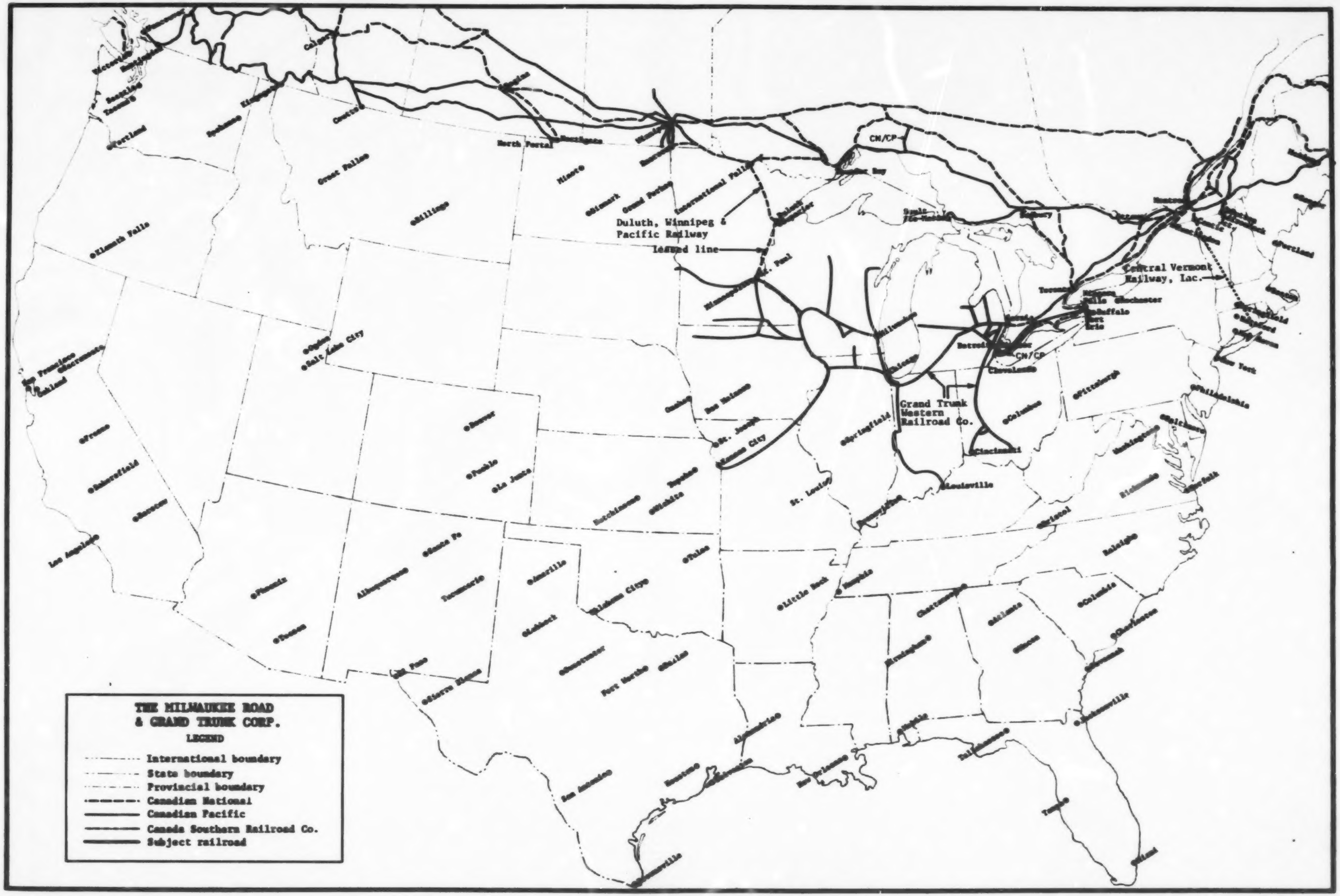
Spokane
Seattle
Tacoma
Vancouver


THE MILWAUKEE ROAD
& GRAND TRUNK CORP.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Duluth, Winnipeg & Pacific Railway
leased line
Central Vermont Railway, Inc.
Grand Trunk Western Railroad Co.
CN/CP
CN/CP
North Portal
Portland
Great Falls
Billings
Minot
Bismarck
Grand Forks
International Falls
St. Paul
Klamath Falls
Ogden
Salt Lake City
San Francisco
Sacramento
Oakland
Fresno
Bakersfield
Barstow
Los Angeles
Denver
Pueblo
La Junta
Omaha
Des Moines
St. Joseph
Kansas City
Topeka
Wichita
Hutchinson
St. Louis
Springfield
Detroit
Cleveland
Columbus
Cincinnati
Louisville
Pittsburgh
Toronto
Buffalo
Rochester
New York
Philadelphia
Baltimore
Washington
Richmond
Norfolk
Raleigh
Columbia
Charleston
Savannah
Jacksonville
Tallahassee
Tampa
Miami
Atlanta
Macon
Chattanooga
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Memphis
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Lubbock
Fort Worth
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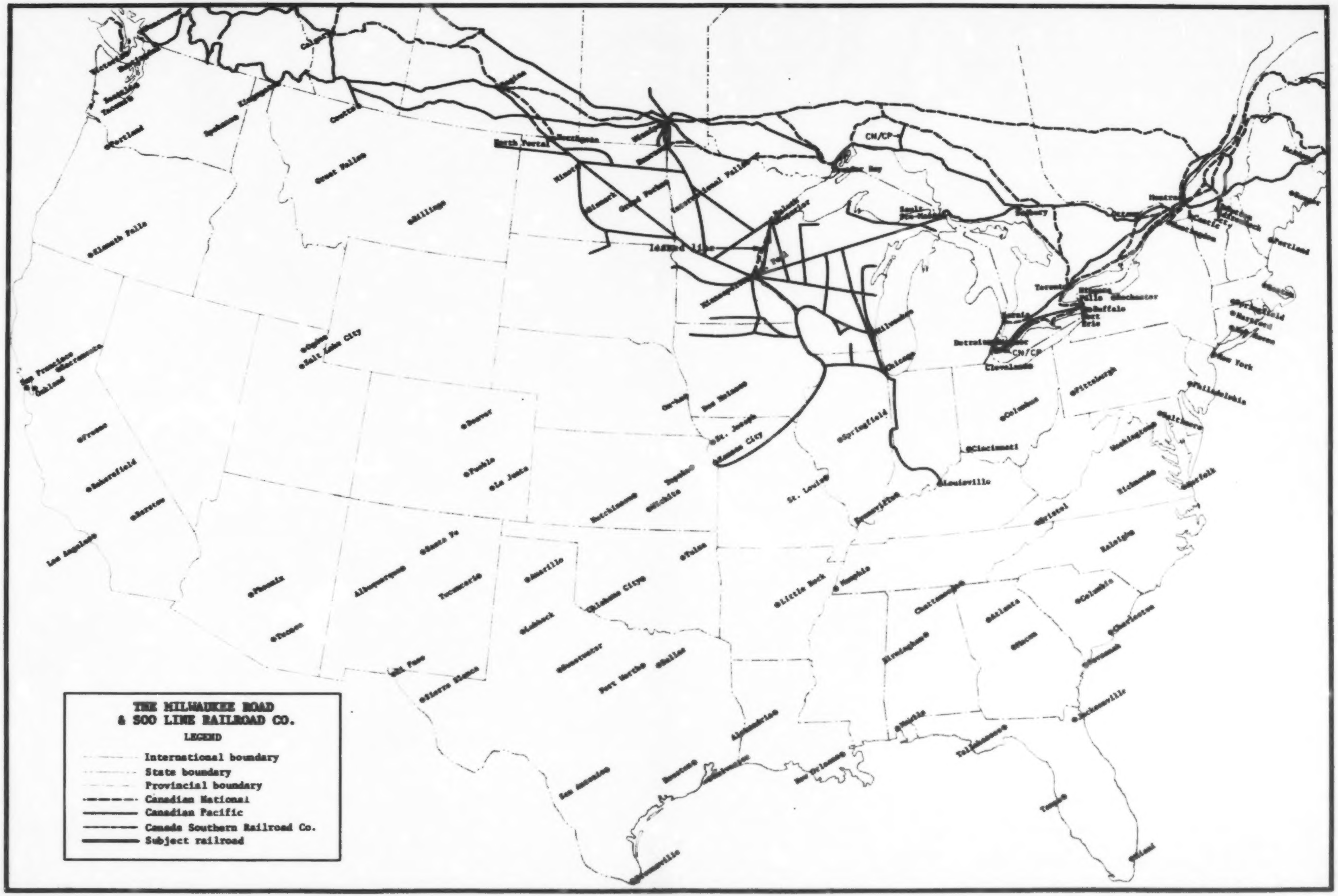
Houston
Galveston
San Antonio
Brownsville
El Paso
Albuquerque
Santa Fe
Tucumcari
Phoenix
Tucson
Alexandria
Montreal


THE MILWAUKEE ROAD
& SOO LINE RAILROAD CO.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Klamath Falls
North Portal
Portal
Minot
Bismarck
Grand Forks
Winnipeg
Emerson
International Falls
Thunder Bay
CN/CP
Duluth
Superior
Island line
Minneapolis
St. Paul
Milwaukee
Chicago
Sault Ste-Marie
Sudbury
Ottawa
Montreal
Toronto
Niagara Falls
Rochester
Buffalo
Fort Erie
Detroit
CN/CP
Cleveland
Bangor
Portland
Boston
Springfield
Hartford
New Haven
New York
Philadelphia
Baltimore
Washington
Pittsburgh
Columbus
Cincinnati
Louisville
Springfield
Omaha
Des Moines
St. Joseph
Kansas City
St. Louis
Topeka
Wichita
Hutchinson
Evansville
Bristol
Richmond
Norfolk
Raleigh
San Francisco
Sacramento
Oakland
Ogden
Salt Lake City
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Tucumcari
Amarillo
Lubbock
Oklahoma City
Tulsa
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Columbia
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Birmingham
Macon
Savannah
El Paso
Sierra Blanca
Sweetwater
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Jacksonville
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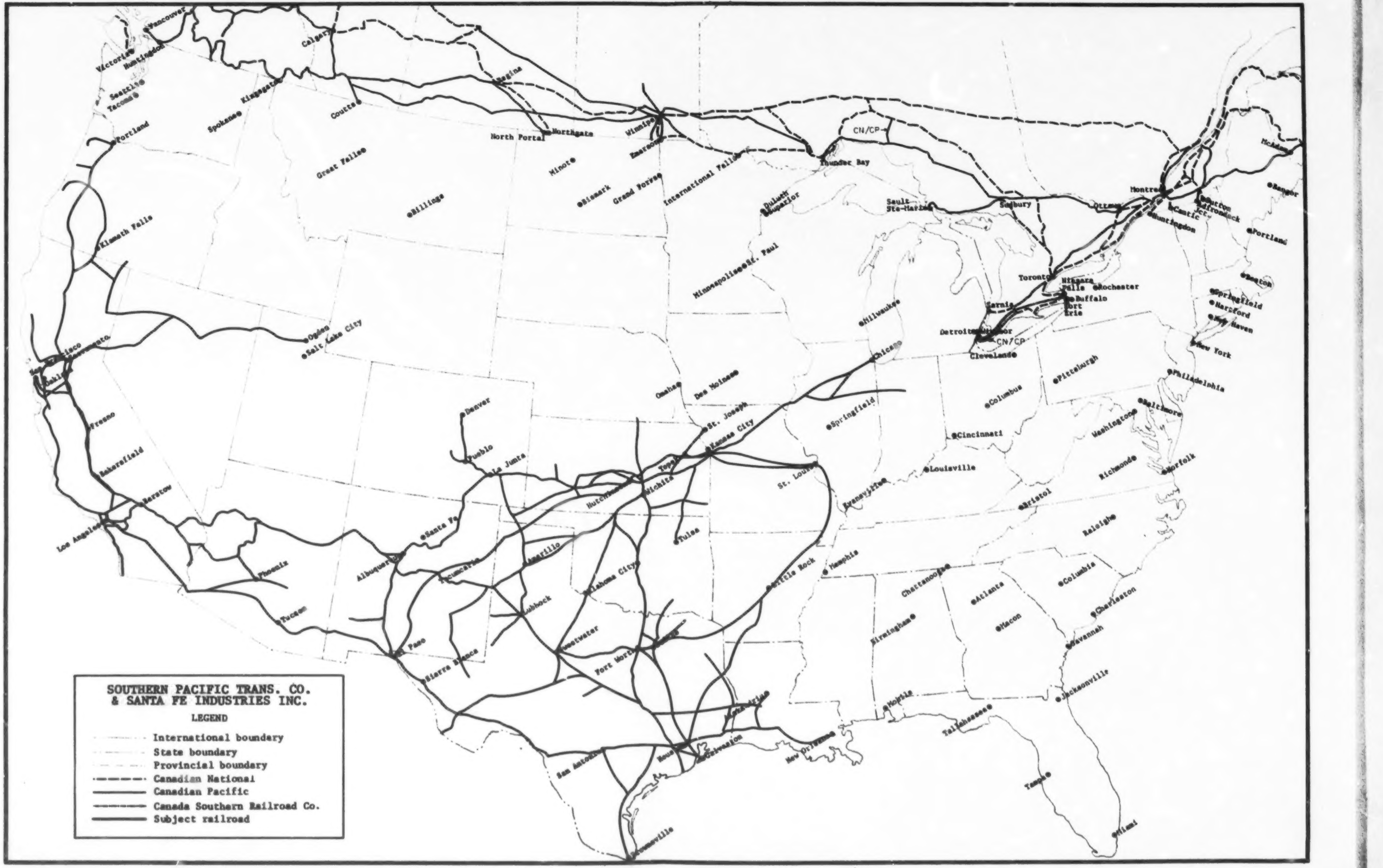
SOUTHERN PACIFIC TRANS. CO.
& SANTA FE INDUSTRIES INC.
LEGEND
International boundary
State boundary
Provincial boundary
Canadian National
Canadian Pacific
Canada Southern Railroad Co.
Subject railroad
Vancouver
Victoria
Huntingdon
Seattle
Tacoma
Portland
Spokane
Kingsgate
Calgary
Coutts
Great Falls
Billings
Regina
North Portal
Northgate
Minot
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St. Paul
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Sutton
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